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Supreme Court, U.S.
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No. 00-347

IN THE

Supreme Court of the United States

THE WHARF (HOLDINGS) LIMITED, a Hong Kong company; WHARF COMMUNICATIONS INVESTMENTS LIMITED, a Hong Kong company; and STEPHEN NG, a Hong Kong citizen,

Petitioners,

v.

UNITED INTERNATIONAL HOLDINGS, INC., a Delaware corporation; and UIH ASIA INVESTMENT CO., a Colorado general partnership,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

JOINT APPENDIX

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APPENDICES DU TO ET

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PETITION FOR WRIT OF CERTIORARI FILED SEPTEMBER 5, 2000
CERTIORARI GRANTED NOVEMBER 6, 2000

587 PP

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Excerpt from Cross-Examination of S. Ng
March 27, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 7582:25-7584:25; Transcript 5395:25-5397:25)

Excerpt from Cross-Examination of S. Ng
March 27, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 7582:25-7584:25; Transcript 5395:25-5397:25)

Q Let's look at Mr. Schneider's letter to you of February 12, 1993, Exhibit 1041.

A Right.

Q February 12, 1993, Mr. Schneider to you regarding again your London meeting. "I just wanted to follow up on our London conversation on a number of points. First, I'm delighted at the progress we seem to be making in improving the business plan on the network side of the business. I know that you and Mark Booth will be discussing methods of making similar improvements in programming where we remain in a difficult situation."

Do you see that?

A Yes.

Q Sounds like somebody that's involved in your project, doesn't it?

A He was interested in involving in our project, but the context is that Mr. Schneider and Mr. Booth knew at that time that we were not going to decide on ownership issues until after station opening. So, whatever they did at that time, they knew what our intention was.

Q Well, Mr. Ng, you keep saying that, but what I'd like to do is get specific with you as to what the parties are saying to each other.

A Okay.

Q And, let's look at this second paragraph where Mr. Schneider says, "Second, we have had some recent success in improving our financial strength and would like to discuss having a stake in the venture in the 25 per cent range provided that NYNEX is not going to participate in the business as an investor." Do you see that?

A Yes.

Q. Okay. So, that confirms what you and I were just talking about that UIH would like to up its 10 per cent, 15 per cent, more up to 25 per cent.

A Yes, I agreed with that earlier.

Q Okay. Now, the ownership issue that UIH was discussing with you was just that. How much ownership UIH could get over and above 10 per cent; right?

A The ownership issues that UIH wanted to discuss with us was just that. But, to us, all the conditions that we had set from Day 1 had not changed one bit.

Q Okay. So, what you're saying is you've got UIH on the one hand that wants to discuss going from 10 to 25 and you've got you on the other hand that doesn't want to discuss anything.

A Well, I told them that no decision would be taken on the ownership until after station opening. At no point in time did I tell them, well, we don't need a telecom partner anymore. We don't need shareholder's approval. We don't need written agreement. We don't need this, we don't need that. Remember, these conditions were always on the table.

APPENDIX DV

Excerpt from Deposition Testimony of S. Ng

March 28, 1997

U.S. District Court for the District of Colorado

(Aplt. 7720-7723; Transcript 5428 (1-6); 5435 (1-7); 5437 (1-5))

Excerpt from Deposition Testimony of S. Ng
March 28, 1997
U.S. District Court for the District of Colorado
(Aplt. 7720-7723; Transcript 5428 (1-6); 5435 (1-7); 5437 (1-5))

In The United States District Court
For The District Of Colorado

United International Holdings, Inc., et al.,	)	
Plaintiffs	)	
vs.	)	94 K 2560
The Wharf Holdings Limited, et al.,	)	
Defendants.	)	

TRIAL TO JURY-DAY 29
EXCERPTS OF DEPOSITION TESTIMONY OF
STEPHEN NG-PAGE 5428

Proceedings held before the Honorable John L. Kane, Jr., U.S. District Judge, for the District of Colorado, beginning at 9:05 a.m. on the 28th day of March, 1997, in Courtroom C-401, United States Courthouse, Denver, Colorado.

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Proceedings recorded by electronic sound recording; transcript produced by transcription service.

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PROCEEDINGS

(Whereupon, a portion of the deposition of Stephen Ng was played for the jury.)

Q The proposed MOU?

A I do not remember.

Q I'd like to go back and look at Exhibit 2082. These are your weekly reports to the Chairman for 1993, and ask you if you would turn your attention to the report for May 28, 1993. I'd like you to look at the second page of the May 28, 1993, WC-21590.

A May 28, 1993?

Q Right.

A What page?

Q You only have one page--

A Unless it's somewhere else.

Q Look at Page WC-21592, which is the June 4, 1993.

A I have 21592.

Q Okay. And down at the bottom, it says, "Partnership discussions with UIH in suspension. TCI also expressed interest in equity participation." Do you see that?

A Yes, I do.

Q Okay. Now, if you'd flip back to the June--to the May 28th entry, it also indicates "Partnership discussions with UIH in suspension." But the TCI appears to be deleted from that. Do you see that?

A This is 21466?

Q Yes.

A Yes, I see that.

Q What occurred on or about May 28, 1993 that caused you to advise the Chairman that partnership discussions with UIH were in suspension?

(Whereupon, an objection was made; no foundation.)

A I don't remember.

Q Why was that being entered on the weekly report of May, 1993?

A I don't remember.

Q When did the partnership discussions go into suspension?

A In January, 1993.

Q Why then was it not noted to the Chairman until May 28, 1993 that partnership discussions were in suspension?

A I cannot remember.

Q Can you remember any event that prompted you to put into your May 28th report that partnership discussions with UIH were in suspension?

A No, I cannot remember.

Q Did you have a discussion with Mr. Woo at or about this time regarding partnership discussions being in suspension?

A I cannot remember.

Q Did you discuss with Mr. Fung partnership discussions being in suspension?

A I'm sorry, I cannot remember.

Q Did you disclose to anyone from UIH that partnership discussions were in suspension?

A I do not remember.

Q What did you understand it to mean that partnership discussions were in suspension?

A I understand that to mean that discussions, our initial discussions with UIH were in abeyance.

Q Did that mean all partnership discussions with UIH; is that what you understood that to mean?

A It doesn't say all discussions, so I cannot conclude that.

Q Well, what were you trying to tell the Chairman by this reference?

A I'm afraid I cannot remember.

Q How do you reconcile the negotiations between Mr. Fung and UIH and the MOU
with partnership discussions being in suspension?

A I do not remember how I reconciled the one with the other.

Q Can you try to reconcile them now?

A I cannot remember where I looked when I apparently reported to the Chairman this language.

* * *

(Viewing of the videotaped deposition of S. Ng resumed on 3/28/97; Transcript 5435)

(Whereupon, a portion of the deposition of Stephen Ng was played for the jury.)

Q Exhibit 2115, this is a September 16, 1993 handwritten note that appears to have been written by you to Mr. Fung saying, "Emil, didn't get very far with Chairman. More interested in a telecom partner. How do we get out?" Do you see that?

A Yes, I do.

Q And that appears to be your initials down at the bottom?

A That is correct.

Q And it's dated September 16, 1993?

A That is correct.

Q Have you ever seen this document before?

(Whereupon, the witness was instructed: I'll instructed you again to answer excluding from your response conversations that you, myself or any other lawyer had the basis of the attorney/client privilege.)

Q Can you tell me, please, what prompted this note to Mr. Fung?

A I cannot recall. But sitting here today interpreting the note, it appears I had a conversation with the Chairman before I

wrote this note, and that conversation may have prompted this note. But I do not recall the conversation or whether or not a conversation did indeed take place.

Q You recall then nothing about what prompted this note?

A Not presently.

Q Were you discussing with the Chairman in this time period the UIH interest in obtaining an investment in the Wharf Cable project?

A I may have been, but I have no recollection.

Q Did the Chairman indicate to you that he was more interested at that time in having a telecom partner?

(Whereupon, an objection was made as to form.)

A I cannot remember.

Q Did the Chairman indicate to you that you should develop a strategy to get out of your relationship with UIH?

(Whereupon, the same objection was made.)

A I do not remember.

Q Do you remember any discussions with the Chairman in September, 1993 relating to "how do we get out"?

A I'm not sure what "how do we get out" means. And I don't remember.

Q Were you in something that you needed to get out of at that time?

A Was I in something that I wanted to get out of?

Q Not you personally. Was Wharf in something that it needed to get out of at that time?

A I cannot remember what this may refer to.

Q Now, the day before this memo, you had a meeting with the Chairman regarding UIH; right?

A The date?

Q The day before this note, you had a meeting with the Chairman regarding UIH; correct?

A I do not remember whether I had a meeting with the Chairman.

Q Okay. Now, your meeting notes indicate that you did; right?

A There was a date on the meeting notes, but--

Q Look at 2084.

A Right.

Q And look at September 15, 1993 meeting notes.

A Well, it actually says September 9th, and then somebody crossed it out and changed it to 15.

Q Okay.

A So I don't know which is more accurate, and I do not recall that the day before the date of this note I had a meeting with my Chairman.

Q Well, sometime in that first two weeks of September, you met with the Chairman to discuss UIH, didn't you?

A I cannot remember.

Q And the Chairman instructed you to do what you had to do to get out of the relationship, didn't he?

(Whereupon, an objection was made; no foundation, and argumentative.)

A (A) I do not remember meeting with the Chairman and, (B), therefore, I do not remember what instruction, if any, he gave me. And, see, I'm not sure what you're referring to when you say "to get out of the relationship."

Q Well, I'm asking you what you meant by "how do we get out."

(Whereupon, an objection was made.)

Q How do we get out of what, Mr. Ng?

(Whereupon, an objection was made; asked and answered.)

A As I said, I don't have a good recollection of what happened at that time. Looking at the date, the September time frame, and looking at the reference to "partner," may be we were--I was referring to the pressure that I was referring to earlier in my testimony today, that UIH was landing on Wharf for a solution to their investment.

Q So is that what you were referring to by "how do we get out," or are you just guessing today?

A I am guessing today.

Q Did Mr. Fung give you an answer or a proposal as to how you would get out?

A I cannot remember whether he did or not.

Q Did you and he discuss a plan as to how you would get out?

A I do not remember.

Q Did you report to the Chairman that you had a plan on

A I do not remember, and I do not remember even whether that was what I was referring to when I asked "how do we get out."

Q Whether what was what you were referring to?

A Whether it was a, what do you call it, theory or guess, rather. It could be that the question "how do we get out" referred to how do we get out of this discussion with the Chairman, I don't know. It was 20 months ago. I don't remember.

* * *

(Viewing of the videptaped deposition of S. Ng resumedon 3/28/97; Transcript 5437)

(Whereupon, a portion of the deposition of Stephen Ng was played for the jury.)

Q At the middle of the page where it says, "UIH, start to back pedal," do you see that?

A I see where it is.

Q What did you mean by that?

A I don't remember seeing this note. I don't remember what I may have meant.

Q Well, you obviously had to see it, because you prepared it, didn't you?

(Whereupon, an objection was made.)

A I don't remember preparing this.

Q Do you deny preparing it?

A I don't deny preparing it.

Q Do you deny that the phrase "start to back pedal" was your phrase?

A I don't deny, but I cannot recall.

Q Now, the Chairman writes, "Disagree. Suggest delete." Do you see that?

A Yes, I do.

Q Did you have a discussion with him regarding that?

A I cannot remember whether I did or not.

Q You recall nothing at all about this document that says "start to back pedal," and then the Chairman saying "Disagree. Suggest delete"?

A No, I cannot recall.

Q What would the A, B, and C under Paragraph 3, what was that? Was that something that you and the Chairman talked about?

(Whereupon, an objection was made as to form; compound.)

A I cannot remember what it was.

Q As of November 1993, were there two schools of thought on the Board regarding the UIH investment in the Wharf project?

A I cannot remember.

Q As of November, 1993, was there any issue with respect to whether the JLG would be a problem for UIH investment in the Wharf Cable project?

A I cannot remember.

Q What did you mean by "activate the TCA"?

A I don't remember saying "activate TCA."

Q You don't deny that that's something placed there by you, do you?

A I do not deny it, but I cannot remember.

Q As of November 24, 1993, was it your understanding the Tca had not been activated?

A I cannot remember what my understanding was at that time.

Q Do you recall anything about your meeting with the Chairman in November, 1993 on these subjects?

(Whereupon, an objection was made; no foundation.)

A I don't remember whether I met with the Chairman in November, 1993 on these subjects.

Q Do you remember having any discussion with the Chairman in 1993 on these subjects?

A No, I'm afraid I cannot remember.

Q Why is it you can't remember this?

A This was a busy time; I cannot remember.

Q Are there any documents that would assist in refreshing your recollection that you're aware of?

A There's nothing I can think of as I sit here today.

APPENDIX DW

Excerpt from Cross-Examination of E. Fung
March 31, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 7740-7918; Transcript 5523-5701)

Excerpt from Cross-Examination of E. Fung
March 31, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 7740-7918; Transcript 5523-5701)

PROCEEDINGS

(At 9:08 a.m. on March 31, 1997, in the United States District Court at Denver, Colorado, before the HONORABLE JOHN L. KANE, JR., U.S. District Judge, with Messrs. Chase and Wilson appearing as counsel for the plaintiffs, and Messrs. Bauer, Jentes, Munson, and Tully appearing as counsel for the defendants, the following proceedings were had:)

THE COURT: Thank you. Good morning.

(9:10 a.m. - Jury present.)

THE COURT: Fire away.

MR. CHASE: Thank you, Your Honor. Good morning.

EMIL FUNG,

called as a witness on behalf of the defendants, having been previously sworn, was examined and testified further as follows:

CROSS-EXAMINATION BY MR. CHASE RESUMES:

Q Mr. Fung, welcome back. Mr. Fung, when you left Wharf, that would have been roughly a month or two after this March 18, 1994 meeting?

A That's about right.

Q And, at the time you left Wharf, you gave a recorded statement to Wharf's lawyers; did you not?

A Yes, I believe I did.

Q And, a transcript was made of that statement, as well?

A I believe so.

Q Have you ever seen it again or heard it again?

A I don't recall.

Q Now, also, Mr. Fung, when you left Wharf, you left a group of handwritten notes at Wharf, your handwritten notes; right?

A Correct.

Q Have you ever seen it again?

A Some of these notes have come up in preparation and in the deposition process.

Q Other than what you've seen in the deposition process and what we've seen here today, did you see any of the other notes that you left with Wharf?

A I don't think so, no.

Q Now, Mr.--

THE CLERK: Just a minute, please.

(Pause.)

Q (By Mr. Chase) Now, Mr. Fung, I'd like you to look at Exhibit 465. That's the September 15, 1992 bid case

presentation. It's going to be in the white book. We've supplemented your book with some additional documents. So, maybe there will be a little bit more continuity here. You got that, Mr. Fung?

A I do.

Q Now, on direct examination, you testified that at the bid case presentation, the board didn't want just one partner; they wanted two partners. Do you recall that?

A Yes.

Q Now, Mr. Fung, look at your deposition, please, Volume II, Page 411. Do you have your deposition there?

THE CLERK: Just a second, please. Volume II dated May 30, 1995.

THE WITNESS: Which page?

Q (By Mr. Chase) I'm going to start--are you at 411?

A Okay.

Q Are you there?

A Yeah.

Q Now, it's also up on the screen. So. you can pick and choose how you want to follow it. I'm going to start at Line 4 on 411. "Were you present during the presentation of this bid case?" Answer, "I don't recall." Question, "Well, let me ask more specifically. Were you present during any discussion relating to WC025820 entitled Partnership Issues?" Answer, "I don't recall." Question, "Do you recall discussion with Mr.

Ng about the discussion that was had with respect to the partnership issues?" Answer, "Where? When?" Question, "The discussion that was had with the people to whom this presentation was being made?" Answer, "I mean, I don't recall this presentation being made. So, I'm not quite sure I can place in my head when I would have discussed that particular presentation with Stephen." Question, "Well, let me back up. Was this, in fact, presented to the board?" Answer, "I wouldn't know."

Now, were those the questions asked and your answers at your deposition about the bid case presentation?

A Yes.

Q Now look, if you will, please, at Exhibit 463. Exhibit 463 relates to the bid case presentation, 4:00 o'clock, September 15, Present; and that, too, does not show you being present. Correct?

A Correct.

Q And, it says, "Following issues were raised by the chairman after the presentation." Do you see that?

A Uh-huh.

Q Was this document brought to your attention at any time?

A I think I've seen it in preparation for this case, yes.

Q In preparation just for testimony?

A Correct.

Q And, do you recall seeing it in preparation for testimony that there's not a word in there about a concern about having just one partner?

A You'll have to give me a few minutes here. Okay. It doesn't seem to be here, no.

Q In fact, at the conclusion of the questions raised by the chairman, the issue relating to UIH is simply, "In view of funding and balance sheet risk should we start to call upon equity from UIH first." Do you see that?

A Which page is that on?

Q This is on the last page of this document, Exhibit 463.

A Uh-huh. Yes, I see that.

Q So now, even though you've got the bid case presentation setting out NYNEX and UIH differently, there's no concern expressed about having just one partner rather than two; correct?

A Not in this document, but I think in a subsequent document that was expressed.

Q And, it also is true you weren't even at that presentation, right?

A That's correct. Which presentation, this one?

Q The bid case presentation?

A Yes, but I think the bid case actually raised the issues of one versus two partners.

Q Do you want to look back at Exhibit 465 and see where you can find that in there?

A No, it's not in here, but from my recollection, what came out of this bid case presentation was something that was directed to Stephen to actually address the one versus two partner issue.

Q Well, we'll get to that in a minute, Mr. Fung. But, let me talk to you about this one partner/two partner issue. As a matter of fact, Mr. Fung, you never, ever told UIH or NYNEX that their right to invest would depend upon the other investing; did you?

A I don't think that's--that's correct.

Q Well, Mr. Fung, let me get your deposition. We'll need Volumes I and II.

THE CLERK: Volume I dated 29 May '95; Volume III, May 31, '95.

Q (By Mr. Chase) Look at Volume I, Mr. Fung, Page 39, Line 8.

A Okay.

Q Are you there?

A Uh-huh.

Q "Did you tell UIH that their right to invest would be dependent upon NYNEX agreeing to invest?" Answer, "I could have said many different things regarding the relationshipbetween NYNEX and UIH. I honestly don't recall." Question, "Did you ever tell NYNEX that its right to

invest would depend on UIH investing in the enterprise?" Answer, "I don't recall."

Now, I'd like you to go over to Volume II, Page 391. 391, Line 18, are you there?

A Yes.

Q Okay. Let's look at what you said at that time.

MR. MUNSON: What line is that?

MR. CHASE: Line 18.

MR. MUNSON: Thank you.

Q (By Mr. Chase) "But, at any time prior to the bid, did you tell any representative from UIH that UIH could not obtain an equity investment in Wharf unless and until the NYNEX board approved the NYNEX investment?" Answer, "No, I don't think we did." Question, "Did you ever tell anyone from NYNEX that NYNEX could not be an equity investor in the Wharf project unless and until UIH agreed to be an equity investor?" Answer, "No." "Did you ever tell either party that?" Answer, "No. You just asked that question. Right." Question, "I mean, any time after the bid?" Answer, "After the bid?" Question, "Yeah?" Answer, "Can you repeat the question?" Question, "After the bid, did you ever tell anyone from UIH that they could not become an equity investor unless NYNEX became an equity investor?" Answer, "No." "Did you ever tell anyone from NYNEX that they couldn't become an equity investor unless UIH became an equity investor?" Answer, "No." "Did you ever tell anyone from UIH that they couldn't become an equity investor unless there was a telecom investor?" Answer, "I can't recall." "And, did you ever tell

anyone from NYNEX that they couldn't be an investor unless there was a cable tv investor?" Answer, "No."

Now, Mr. Fung, I'd like you to look over at Page 740--

MR. MUNSON: Excuse me, could you--I'd like to ask for a fairness reading. Page 287, Lines 6 through 23.

MR. CHASE: Wait a minute. 287 isn't even in the vicinity we're talking about here.

MR. MUNSON: It's the same subject.

MR. CHASE: Well, not--

THE COURT: No, that's not required. A fairness hearing is to bring out the specific point in its context, not some other place in the deposition. You bring that out in redirect.

MR. MUNSON: Okay. Just so you know, it's the very same topic.

THE COURT: All right. Yeah. You bring it out on redirect.

MR. MUNSON: Okay, thank you.

THE COURT: Okay.

Q (BY MR. CHASE) Mr. Fung, let me ask you to look at Volume III, Page 740. I'm going to start at Line 4.

A Okay.

Q Are you there?

A Yep.

Q "Did you tell them at any time that their right to invest would depend on them having a telecom partner?" Answer, "I don't recall." "Do you know if Mr. Ng ever told them that?" Answer, "I don't recall." "Do you know if anybody from Wharf ever told them that?" Answer, "I don't recall."

Now, Mr. Fung, I'd like you to look back at Page 95 which is back in the first volume. Are you there?

A Uh-huh.

Q Line 13. "When you say 'that was understood by both sides', did you have any conversation where you told UIH that it could not become an investor if NYNEX did not become an investor?" Answer, "No." "Were you present during any such conversations?" Answer, "No." Question, "Were any such conversations reported back to you?" Answer, "I can't recall."

Now, finally, Mr. Fung, you never told the Broadcast Authority, the banks, or the investment analysts that one party's right to invest would depend upon the other party investing; did you?

A That's too broad a question.

MR. MUNSON: Objection; compound.

THE COURT: Sustained.

Q (By Mr. Chase) All right. We'll take it one at a time. You never told the banks that you were talking to that UIH's right to invest would depend upon NYNEX investing?

A Well, first of all, UIH never had a right. So, I don't--there was no sort of reason to mention that to the banks.

Q Well, Mr. Fung, you understand in this case there's a claim of a right; right?

A Correct.

Q And, did you ever tell the banks that whether UIH got a right would depend upon whether NYNEX invested?

A I think we had told the banks that we were interested in a deal wherein Wharf held a majority in a consortium that comprised of more than two parties.

Q So, just to be sure, you never told them that having UIH getting a right to invest would depend upon NYNEX or a telecom partner investing?

A We told the banks that--when the issue came up with respect to meetings with either NYNEX or UIH present that the intention of Wharf was to have a three-party deal.

Q Turn to Page 865, please, in Volume III of your deposition. I'm looking at Line 11.

A Okay.

Q "Did you disclose or did anyone on the Wharf side disclose to the Hong Kong government at any time that a UIH investment right would be dependent upon Wharf having a telecom partner also investing?" Answer, "I don't recall." "Do you know whether that was ever disclosed to any of the banks with whom you were discussing financing?" Answer, "I don't recall." "Do you know whether that was disclosed to any of your investment analysts?" "I don't recall."

Okay. Were those your testimony at your deposition?

A Yes, and I think it's consistent with what I just said. I mean, here, it refers to a UIH investment right. If it never existed, then that wouldn't have even been mentioned.

Q Well, okay, that's your explanation today. But, Mr. Fung, isn't it a fact, sir, that you always understood that for business purposes, UIH and NYNEX could be treated separately. It was only for purposes of the bid that you wanted them packaged in the same way?

A That's absolutely untrue.

Q Turn to Page 342, Volume II, of your deposition? I'm starting at Line 9 talking about the board of directors. Question, "Well, did they direct you that you had to treat UIH and NYNEX the same for the purpose of the bid?" Answer, "That was the overall conclusion that we reached." "So, anything you did after that would have to be consistent with treating UIH and NYNEX the same way for the bid?" Answer, "For purpose of the bid, yes." Question, "And, you would expect then that every presentation you made to the board thereafter would do that?" Answer, "With respect to how they would be treated in the bid, yes." Question, "What about with respect to the actual business relationship? Could that be something that could be separate?" Answer, "Possibly." Question, "And, the board had no problem with that?" Answer, "No."

Now, turn to Page 493, please, Line 17?

A Yep.

Q Are you there?

A Uh-huh.

Q Question, "At any time prior to the end of 1992, was it your understanding that UIH could only become an investor in the project if NYNEX was also an investor?" Answer, "Could only become an investor in the project if NYNEX was an investor up until the end of 1992?" Question, "Was that your understanding through the end of 1992?" Answer, "No, I think UIH could have become a separate investor up until the end of 1992." Question, "Regardless of whether NYNEX or a telecom partner was involved?" Answer, "Right, but the fact was they couldn't make that because they hadn't demonstrated their financial capability." Question, "If they had been able to demonstrate their financial capability prior to the end of 1992, was it your understanding that they could have invested in the cable project regardless of the existence of a telecom partner?" Answer, "I'm not sure whether that would have been the case. I don't know." "Your best recollection of your understanding at the time is what?" Answer, "I honestly don't recall."

Do you see that?

A Yes.

Q Now, Mr. Fung, let's talk about NYNEX for a minute here since NYNEX seemed to be the telecom partner that was on the table at the time. Now, NYNEX has been described by Mr. Schneider in this case as "flaky" during this period of time, '92; and by Mr. Ng as jittery during this period of time. We have flaky and we have jittery. Would you care to characterize NYNEX's conduct and its attitude towards the cable project in the 1992 time frame?

A You want me to give you a word?

Q You give me the way you saw it.

A Well, I think--

Q Fung on NYNEX?

A Okay, Fung on NYNEX. Will I get this published? No. I think, you know, as all deals go, people work very, very hard towards getting a deal done. The fact was that at NYNEX they had many, many corporate levels, as in a very, very large corporation you would expect. You have vice-presidents and senior vice-presidents and executive vice-presidents and then, you know, super executive vice-presidents and what have you, going all the way up. And, I think if you were to ask me, you know, would my dealings with NYNEX have been any different than any dealings with any major large AAA corporation, I would have said no. They were earnest in wanting to invest in the Wharf cable project or, more appropriately, in the Wharf cable and Wharf telecom projects. And, you know, they went through all the various levels and we sort of, you know, went with them. And, I guess, your reference to jittery and flaky is that every time that you had to line up a meeting, they basically had to get a whole bunch of people in from all around the world because they were dealing with the international division. And so, we would set a date and we would expect to hear from them, and then, no, no, so-and-so's flight got caught in Brussels and they couldn't get back to New York on time. So, the meeting was delayed. Then, the next meeting was set up and the somebody else dropped out.

So, in that sense, I think you can explain that there was a little bit of flakiness to NYNEX, but only in this factor we couldn't get responses out of them on a timely basis. It wasn't because the people were not earnest in working with us towards a deal and looking at the business from a very strategic standpoint and then in ultimately wanting to become partners with us.

Q And then, and ultimately not wanting to become partners?

A This is true.

Q And then, ultimately wanting to become partners again?

A Well, that one, I wasn't quite sure of.

Q All right. Well, let's look at a few specifics here, please. Look at Exhibit 297. This is the July 17, 1992 Wharf Communication memo from you to Mr. Ng regarding a meeting with NYNEX.

A Sorry, you'll have to give me a minute here.

Q Are you there?

A Yes.

Q Now, I'm not going to go through this entire memo because we've done this on a number of occasions. But, this was your report to Mr. Ng regarding the meeting you had with Mr. Duffy on that day?

A Yes, this was a very, very early meeting.

Q All right. Now, if you turn over to the second page, in the last paragraph what you're trying to do is report to Mr. Ng various options you'll have in the event that NYNEX follows through on what appears to be their lack of interest in the cable project; right?

A I think this--yeah, this was a very--as I said, it was a very early document that stemmed from our first--how would I say--sort of our first dealings with NYNEX on the cellular telephone bid. And, this was the memo that was written after that. So,

this was dealing with the issues as to where we wanted to go with NYNEX in terms of the relationship and NYNEX at that point in time had not expressed much of an interest in our project because we hadn't actually approached them with a whole lot of information.

Q Well, the fact of the matter is you'd been dealing with NYNEX long before you ever showed up at Wharf, right?

A But, only on a cellular telephone basis, not on a cable and telecom basis because there was no regulatory framework for them to even consider the project.

Q Mr. Fung, I'm not going to pull it out there, but your counsel and your previously witnesses have made a big show of showing different things submitted to the government back in 1991 about Wharf trying to get a cable and a telecom license and always expressing their thanks to NYNEX for helping out. Are you familiar with that?

A You'll have to refresh me, I'm sorry.

Q Well, I'll tell you what, we'll let it go. Let's talk about what's in this memo. Let's talk about what you know about it.

A Okay.

Q When you're confronted with the fact that NYNEX may not be interested in the cable television, you consider the options and one of the options is simply to have NYNEX be a consultant, right?

A Correct.

Q And, the issue that you raise in your option down at the bottom of this is would this be acceptable to our cable television partners; right?

A Sorry, can you refer me to the paragraph?

Q I'm looking at the bottom of--where it says, "The second option is more palatable for the cable investors as the contractual revenues will be viewed as incremental returns on top of our fiber based cable business plan. From a Wharf image perspective, we can minimize any perceived weakness and are not possessing a signed-on telco by designating NYNEX as a telecom application consultant to our cable project. The cable partners should have no trouble with this."

Do you see that?

A Yes.

Q All right. And, that was the case, right?

A I'm sorry, the case for?

Q That if NYNEX were to become a consultant, your cable tv partners--namely, at that time, UIH, right, and probably Fox?

A At this time, well, this was very early-on. I mean, we had a lot of potential cable partners in our head.

Q On July 17, 1992, you say you had a lot of potential cable partners?

A Yes.

Q Why don't you look at Exhibit 235, please?

A Sorry, I don't have that here.

Q Well, we're going to have to go to a big exhibit here. That one is going to be in the larger group. Well, I'll tell you, we don't even have to do that, Mr. Fung. I can do better for you. Don't even bother with 235. 235 is a collection of a lot of stuff. Look at Exhibit 315. Exhibit 315 is your Wharf Communications meeting notes for--the agenda is July 27. The notes are July 20. And, it talks about strategic alliances and that's on Page 06896. Let me put this exhibit aside for a moment. We'll talk about that. Look at that page, strategic alliances. Do you see that?

A Yes.

Q All right. At this point in time, your strategic alliances are possibly NYNEX; right?

A Uh-huh.

Q UIH, right?

A Yes.

Q And then, TCI Comcast who was eventually going over to Hutch, correct?

A Right.

Q Okay.

A Actually, TCI Comcast is missing Time-Warner, as well. They were part and parcel.

Q TCI Comcast, Time-Warner, and that all became a Hutchison ally, right?

A Yes, eventually, but not at that time.

Q All right. But, shortly after this time, right?

A I can't recall exactly when, but not at this time.

Q And, you weren't exchanging joint venture considerations with TCI Comcast/Time-Warner, were you?

A No, not at that time.

Q And, TCI Comcast/Time-Warner wasn't sending seven people to Hong Kong to sit down with your group and talk about what's going on in Hong Kong; were they?

A They weren't sending seven people, but we did have discussions.

Q But, they weren't going through the kind of work and diligence that UIH was going through, were they?

A No, not in the same extent.

Q And, the other parties under strategic alliance, Newscorps?

A Uh-huh.

Q And, what wasn't going to be a cable television company, was it?

A Well, no, Newscorp is a programming company. That was one of our potential partners.

Q All right. And, these other ones, Taiwan, CIH--I think, it's been testified to they weren't a cable television company?

A Well, they actually--they are. They're a Taiwanese cable company, yes.

Q But, that's not somebody you were seriously considering at this time?

A Not in the same context as others, no.

Q All right. Now, let's go back then to what you call an early document, July 17, 1992. Just to put a fine point on this, what you're considering here at the bottom is "NYNEX to be a consultant" and it should be okay with your cable tv partners, right?

A No, that is not--I think you're taking it out of context. The entire document addresses the NYNEX strategy that we wanted to pursue; not for them to become a consultant, but for them to actually become a larger sense, a larger strategic partner over and above the cellular participation that we'd been having in the past and for them to actually look at things like the telecom plan and also the cable plan. Because the government franchises hadn't been put up essentially for bid at that point in time, we needed to get their initial interest and this is what this document is all about. I think, you're looking at one section of it and looking at a particular option that we looked at and saying that it's a consultant.

Q I'm sorry, I don't want to beat this to death, but I'm looking at something that's in the paragraph that starts with "respect to NYNEX's lack of interest in the cable investment, we have two choices." Right?

A Correct.

Q And, you outline the choices, right?

A Yes.

Q And, that's what I'm talking about, right?

A Yes.

Q Let's go to the next week, July 25, 1992.

A Which exhibit is that?

Q This is Exhibit 314.

A Okay.

Q Do you see that?

A Yes.

Q Now, this is the Wharf Communications Investment Limited weekly activity report authored you; right?

A Correct.

Q And, it says, "Partners. Some strong support maintained by UIH and Fox, discuss potential pullout of NYNEX. No real concerns." Do you see that?

A Uh-huh.

Q Did that accurately reflect the state of affairs at that vpoint in time?

A Yes.

Q Okay. Now, let's go--

A However--

Q Pardon me?

A Sorry, can I just add to that?

Q Sure.

A I mean, this was a report from me to Stephen regarding the specific--I mean, this is a status report for NYNEX at that particular time. Things changed very, very quickly thereafter with NYNEX.

Q Well, that's all right. I'm talking to you about at that point in time there's a potential pullout of NYNEX; right?

A The pullout of NYNEX was--well, I guess, in this context was put a little strong. I mean, NYNEX was not pulling out in terms of pulling out people.

Q Well, whatever they were pulling out of, you discussed it with your potential cable partner, UIH; right?

A Well, we talked about what happened if NYNEX wasn't there.

Q Yeah.

A Okay. That was the discussion.

Q Okay. And, no real concerns expressed, right?

A That's correct for cable.

Q Okay. Well, let's go back to a document you and I were just talking about a minute ago.

A Uh-huh.

Q And, that would be this Exhibit 315, your coordination meeting notes, roughly during this same time period. Do you see that?

A Yes.

Q And, this is on the same subject about NYNEX may lose interest if the GSM is not successful. That's the cellular, right?

A That's correct.

Q And, the future arrangement may not be a strategic partnership. NYNEX may charge a consultancy fee.

A Yes, and allocate it to future equity participation in a future project.

Q All right. So, they would charge you a fee and if, as, and when they ever decided to become an investor, they'd roll that into their equity; right?

A That's right and they were reviewing the options. Again, at that point in time, the lull in activity was because of the fact that the government regulations for either the telecom or the cable project had not come up. So, NYNEX--when we say pullout, NYNEX was just about finished on its cellular bid. So, the issue was, look, are these guys going to stick around here waiting for the government to issue these new license documents or not? So, this whole issue was--I think you're looking at it and you're picking out little points about pullout and so on and so forth. But, the issue really was it was a timing issue. They had people on the ground working with us and so on and so forth. they had other projects to pursue. How much in the way of resources were they going to dedicate to looking

at our project when, in fact, the government had not issued anything? So, I think, this is the lull that we're talking about.

Q All right. Well, let me give you that. Let me give you that for purpose of this discussion. We'll not use the word "pullout"; we'll just put a big question mark over what's NYNEX going to do; right?

A Okay.

Q That's a fair characterization?

A Fair, yes.

Q And, everybody knew about that question mark; you knew about it, Stephen Ng knew about it, UIH knew about it?

A Yes, we made a point to inform everybody, yes.

Q All right. And, this question mark regarding NYNEX with some blips up and some blips down remained a question mark all the way up to the end of 1992; didn't it?

A Not true.

Q You mean it never stopped being a question mark? NYNEX said okay--

A No, I think the question mark was removed because very shortly after this, the NYNEX people got together at the meeting and they got cracking, one, not only on the cable side, but two, they were helping us on the telecom side, as well.

Q All right. And, that lasted for a while and then what happened?

A Well, as I said, they made a lot of presentations to their people and it, in fact, initially proceeded very, very smoothly all the way up until the finance committee of the board which is, you know, the next to the last stage. Then, there were expressions--well, first of all, again, there were problems in terms of having these meetings arranged at the right times. We were up against a time deadline because we needed to submit our bid on September 30. So, after that, it kind of got harried because they couldn't get their act together on time and we needed to get them in under a certain format for the purposes of the bid.

Q Mr. Fung, isn't it a fact that you, yourself, felt that you were being baited and switched by NYNEX?

A It is absolutely not a fact.

Q Look at Page 407 in Volume II of your deposition.

A 407?

Q 407. Start on Line 16.

A Uh-huh.

Q "So, at this time, August 26, did you feel like you were being given the bait and switch by NYNEX?" Answer, "Well, we registered that there were certain uncertainties within NYNEX." Question, "Did you register that displeasure with NYNEX?" Answer, "This displeasure? Yeah, we registered our concern."

Do you see that?

A Yes, and this was entirely with reference--I'm sorry.

MR. MUNSON: Go ahead, finish your answer.

THE WITNESS: This was entirely with reference to the fact that the dates were being switched around on NYNEX's board and we were saying, look, guys, we've got this problem of getting a bid together by September 30. Please, try to arrange a schedule so that we can actually hear something by them.

Q (By Mr. Chase) Well, the fact of the matter is--

MR. MUNSON: Objection, Your Honor, if I may.

THE COURT: All right.

MR. MUNSON: I know the question has been asked and answered, but I wanted to object to this as impeachment because the question that Mr. Chase asked the witness was whether NYNEX had bait and switched Wharf and the witness said no. And, the question in the deposition is, "So, at this time on August 26 did you feel like you were being given the bait and switch by NYNEX?" And, the witness doesn't say yes. The witness says, "Well, we registered that there were certain uncertainties with NYNEX." I just want to make the point that that testimony in the deposition is not inconsistent with the testimony that he gave here in the courtroom. I understand that the credibility of the witness is a question for the jury, but I believe that attempting to impeach someone with testimony from a deposition that's not directly contrary--

THE COURT: It is not a direct contradiction.

MR. MUNSON: That's my point, Your Honor.

THE COURT: All right. Okay.

MR. MUNSON: And, plus, I think it's improper--

THE COURT: It's sustained.

MR. MUNSON: Thank you, sir.

Q (By Mr. Chase) All right. Mr. Fung, we'll move on to a document that I've been trying to put on the screen for the last few minutes here. This is the one where we're talking about the July 27 agenda with the July 20 notes. And then, it goes on to say, "It was agreed that NYNEX adds no value to Wharf Cable. Investors like Fox and UIH would actually prefer not to have NYNEX as partners as they were not keen on the telecom's business." Do you see that? That's 3.1.6.

A Yes, I see it. Uh-huh.

Q And, were you of the view, as well, that NYNEX added no value to Wharf Cable?

A Well, I would say this. If you defined Wharf Cable as being the cable company, then if UIH and Fox were involved, their addition of value would be marginal because they would already be players there. Okay?

Q You say their additional; you mean, NYNEX's additional?

A NYNEX's addition.

Q Okay.

A But, that only applies insofar as the Wharf Cable enterprise is concerned. As we have testified before, we were not actually out there to just build a cable system. We were out there to build a telecommunications system which comprises both telephone operations, as well as cable operations. In that sense,

a larger strategic sense, the NYNEX participation in that sense would be of highly value to me for the fact that the entire telecommunications industry, whether you call them cable companies, whether you call the telephone companies, whether you call them even programming companies--and I think I explained this last time before--was moving towards this convergence where every single part of the whole had to rely on each other. Okay? And, this was exactly the game plan that we had for Hong Kong. We were not out there strictly to build a cable company. We were out there to get cellular franchises, we were out there to get telephone franchises, and we were out there to build programming.

Q All right. The fact of the matter is, however, Mr. Fung, that in the summertime you realized that the cable tv and the telecom license were going to be separate. Right?

A Much later than this, yes.

Q Well, you say much later than this; this is July 1992. You didn't submit your bid--you submitted your bid in September 1992. So, it can't be that much later, right?

A Well, no, the guidance--I can't exactly remember when the guidance--but even when the guidance notes from the government came out, we still had to debate as to whether--how closely linked the telecom license was. But, don't forget; I mean, it had been our strategy all along at the Wharf Communications Investment level that we would create a company that would comprise of all of the various elements. That we would not create a company that strictly addressed one side of the business or another.

Q Well, Mr. Fung, let's talk about that for a second. Go to Exhibit 235 and it's in one of those documents I gave you in a folder today so you wouldn't have to deal with the whole big

collection. I'd like you to look at the August 26. There's two 235s that I've given you; one is the August 26 notes of your Communications meeting. Now, this is--

A Sorry, I'm having trouble finding it.

Q Yeah, I have given you two 235s, and they're both dated on the face page 1 June 1992, but then when you open it up, you find that one of them relates to weekly coordination meeting minute notes of August 26, 1992 and the other one is September 1, 1992. Do you see that? And, I've done this simply for convenience. They're all part of 235 which is kind of a collection of notes. Do you see that?

A Yeah.

Q I'd like you to turn to the 8-26 notes. Now, we're about a month later down the line here, right?

A Uh-huh.

Q And, we've got a 4.3--are you there?

A Sorry. Okay.

Q You've got, "Competition from NYNEX. Support from NYNEX far from satisfactory, so far. Consider other partnership candidates to provide competition for, competition, or as fall back. No approach for the time being, but SN to register displeasure with NYNEX, Farina, or Duffy at the next opportunity."

Do you see that?

A Yes.

Q Now, go over to the next set of notes for the next week. That would be September 1, 1992, and at Section 3--

A I'm sorry, which--

Q This would be Exhibit 235 again, but these would be the September 1, 1992 coordination meeting notes.

A All right.

Q You there?

A Yes.

Q It says, "Telecom. Paper from NYNEX still outstanding. Support from NYNEX is unsatisfactory. SN to find next suitable opportunity to register complaint with Farina, Duffy." Do you see that?

A Yes, this was in specific reference to--the title is telecom in both cases, but really this was specifically reference to one paper that we wanted to position in front of the government with respect to telecom deregulation. NYNEX had undergone the telecom deregulation here in the U.S. with the AT&T breakup and so on and so forth. Where we were unsatisfactory was the fact that we said, look, there has to be just piles of arguments and information or submissions to the government that were made out of that process, and we were having a hard time getting the guys in Hong Kong to lay their hands on those arguments that we would hope to turn around and similarly use as, you know--sort of as our presentation to the Hong Kong government. So, I think this is a very, very narrow instance what we're talking about.

Q Mr. Fung, I don't mean to quibble with you. But, it says, "Competition for NYNEX. Support from NYNEX far from

satisfactory, so far. Consider other partnership candidates to provide competition or as a fall back." Do you see that?

A Yes, I do.

Q That seems a bit more broad than just not providing a paper, doesn't it?

A No, I would disagree with that. At that point in time, regulation was the be all and end all of whether we actually had a business opportunity or not. And so, with respect to that particular point of regulation, you know, NYNEX, we felt, was not pulling up, as such. We knew they had the data there and their people told us that they had the data there. Okay? The problem was it wasn't getting into our hands.

Q Let me ask a different question, Mr. Fung. With respect to these various things with NYNEX, potential pullout, performance not satisfactory, may be a consultant, were you keeping UIH advised about the NYNEX situation whether it was up, down, even, or wherever it was?

A Well, as I just testified, they were notified and we had actually asked them, you know, what would your view be if NYNEX were not to participate? And, they said, well, that's not a problem. So, I think that's notification in itself. Now, do I go through every single day and pick up a phone on every single nuance that comes from NYNEX, I don't think I can be expected to do that. In fact, I was way too busy to do that and I don't think it's common business courtesy to do that. If there is a substantive point, then I would have, as I did, talked to partners like UIH and Fox.

Q All right. Well, that's fine. So, as far as you could tell, when NYNEX was up, down, or in between, UIH should be generally aware of that?

A Yes.

Q Okay.

A Generally.

Q Now, let me go back to something you wanted to talk about a minute ago when you were talking about the bid case presentation and the fact that it was ultimately decided that there would be two partners rather than one and you couldn't go to the bid with just UIH. Do you remember that?

A Yes.

Q All right. Now, look at Exhibit 473, if you will, please? Now, Exhibit 473 is a September 16, 1992 memo from Mr. Ng to Mr. Woo regarding the pros and cons of including UIH as an equity partner. You've seen this document before?

A Yes, I have.

Q In fact, you would have gotten a copy of it at that time, right?

A Correct.

Q Now, it's a fact, is it not, that the Option 1 that was chosen in there was chosen strictly for bid uniformity, not as an expression of the underlying relationship, the business relationship?

A Well, I'm not quite sure what you mean by bid uniformity. But, the way I would express it is we still had a desire to go forward on a three-party basis to do a deal with UIH--or sign a shareholder's agreement with UIH and NYNEX. The fact that NYNEX informed us that they couldn't come to the table

before the time that we could submit the bid necessitated that we look at two options. One was do we go with two parties with UIH or do we still maintain our intent to go with three parties, but knowing that we couldn't do that because NYNEX wouldn't be able to give us a sign-off, then it was a choice of one versus two parties and I think this is what this document represents.

Q My question was a little bit different than that. Option 1 would be the one where Wharf is 100 per cent owner, right?

A Correct.

Q And, that option was chosen for bid uniformity, but not necessarily for the underlying business relationship?

A I guess, I'm not understanding what bid uniformity means.

Q Meaning that you would have a bid showing Wharf as the 100 per cent owner, but as to whether there could be a partnership with one or the other, UIH or NYNEX, that wasn't necessarily decided by this particular memo?

A Whether we would have--no, we would not decide by this particular memo whether to have one or two partners. We would decide by this memo how we were going to look at our--not just for the bid, though. This is also addressing the fact that we have two potential partners out there. One of them can't sign up by the date and, in fact, two of them really couldn't sign up because we still had problems with UIH in terms of, you know, if we sign up, can you fork out your money Day 1? So, we had these two parties that couldn't sign up on a deal. Okay. We were forced to look at it and say, well, gee, you know, do we go with one or do we actually not go with them at all? Because we knew one had actually said to us, for sure, there was no way that they could come in.

Q Well, I guess, what I'm getting at, Mr. Fung, is that for purpose of the bid, you certainly chose Option 1; right?

A This is true.

Q But, that did not necessarily reflect the fact that Wharf still could choose to have just one partner as a business relationship after you got past the bid?

A It could have chosen one, it could have chosen two. I think, our intent was to have two partners together even after we submitted the bid.

Q All right. Let me ask you to reflect on your testimony for a second when you testified here on direct.

A Sure.

Q I believe you testified that you were going into a meeting at Mr. Bellis' office to work on the three-party letter of intent when you got notification that Option 1 had been chosen and so you dropped the three party letter of intent and went to the Technical Cooperation Agreement. Is that a fair summary of what you said?

A That's right.

Q All right. Now, it really didn't happen that way, did it Mr. Fung? Look, if you will, at Exhibit 486.

A Okay.

Q Now, Exhibit 486 is a collection of documents, the first of which is September 17, 1992, and then if you turn in a couple of pages you get another transmittal of September 18, 1992 and

that would have been from Mr. Ng to you. Correct? And, to Mr. Simon Yu?

A Yes.

Q And, it says, "UIH participation. The chairman has approved an amended version of the ownership and management structure and I attach a copy for your reference." Do you see that?

A Yes.

Q Now, after Exhibit 473 that we just looked at, there was this presentation to the chairman of a proposed structure and the approval by the chairman of this structure. Correct?

A Just give me a minute to refresh myself.

Q Please?

A Thanks. Okay. Sorry, what was the question?

Q The question was that you didn't go from choosing Option 1 and doing a TCA; you had a situation here where something was proposed to the chairman and he approve it, right; and that's this Exhibit 486?

A I think what was approved was actually, you know, the way I recall it is one, two, and three is the real topic of this page, the ownership and management. How would we characterize that in terms of structural organization? And, this refers to these management companies that we would build and actually we never exercised those management companies because I, subsequently, went back after receiving this and said, you know, this doesn't make sense.

Q Well, Mr. Fung, let's look at the internal consumption of this. That's part of the approval, isn't it?

A Not that I understood at the time.

Q Well, I'll tell you what. What's it there for? Let's look at it.

A All right.

Q This whole thing is approved by Mr. Woo and I believe he testified he approved the whole thing. Do you have any doubt about his testimony?

A No. I mean, I see his signature here.

Q All right. Now, under internal consumption only, it says, "A shareholder's agreement under which NYNEX would be invited in, but a non-binding letter of intent for UIH." Remember that?

A Uh-huh.

Q And, remember that being the way that this thing is set up after the company chose Option 1?

A Sorry, I need to go back to the Option 1. Which exhibit was the Option 1, sorry?

Q 473.

A 473. I'm sorry, can you repeat the question?

Q Yeah. The question was do you recall this setting up this way; that the chairman approved that there would be a

shareholder's agreement for NYNEX and a non-binding letter of intent for UIH?

A Yes, and I think in this instance the shareholder's agreement to NYNEX still contemplated that there were going to be three parties.

Q Well, it's pretty clear from this that UIH was not going to be allowed to sign the shareholder's agreement, right?

A Well, yeah, that's what Option 1--sorry, that's what Option 1 suggests; that there is going to be 100 per cent Wharf ownership.

Q Mr. Fung, I'm looking at the approved by the chairman--the structure approved by the chairman.

A Right.

Q Where it says, "For internal consumption only. After October 15, 1992"--that's after the bid, right?

A Yes.

Q "NYNEX will be invited to sign a shareholder's agreement." Right?

A Correct.

Q And, UIH would only be allowed to sign a non-binding letter of intent, right?

A But, it's a non-binding letter of intent subject to financial capability and so on. I mean, I think what we're aiming for here and I think just to clarify the whole issue, we are still aiming to sign a shareholder's agreement between UIH and

NYNEX. Two things have come up prior to our submission of the bid that necessitated a different course of action. One, NYNEX couldn't have its board meet in time. Therefore, for practical reasons, they could not put their signature to the bid. Okay? Two, from meetings with Mike Fries that I believe I had just before that time or just after this time or at this time, he indicated that UIH did not have the wherewithal to financially commit to the deal. Okay? So, here we have two shareholders, two potential shareholders, that really couldn't sign a shareholder's agreement and make good on a shareholder's agreement prior to the submission of the bid. What happened is here we are looking at options as to what we can do and the one that I specifically recall, you know, when you talked about September 18, the one that I recall sitting in the lawyer's office and getting an instruction to proceed on the TCA, was this Option 1 that's referred to in this exhibit.

Q Well, I understand Option 1 from Exhibit 473. What I'm trying to do, Mr. Fung, is focus you on what the chairman approved after that memo. After that memo, the chairman approved after bid a shareholder's agreement for NYNEX, but a non-binding letter of intent for UIH. That's what it says, right?

MR. MUNSON: Objection, Your Honor; asked and answered a couple of times.

THE COURT: Overruled.

THE WITNESS: I mean, look--yeah. I mean, it says this, but I'm giving you the context in which this decision was based.

Q (By Mr. Chase) Well, Mr. Fung, we're going to be here for a month if you keep giving context. I'm trying to move

forward here. This was the decision of the chairman at this point in time, right?

A This was what--I believe that the decision of the chairman was in relation to points 1, 2, and 3. The internal consumption only is something that was in flux at the time given consideration of this Option 1.

Q Well, I guess, we'll have to let the chairman's testimony speak in counterpoint to yours. But, why don't you turn to Exhibit 499, please, because I guess there's still more here.

A All right.

Q Do you see Exhibit 499? That's a September 19, 1992 memo from you to Mr. Ng?

A Correct.

Q And, do you recall the question was posed to you as a result of the chairman's structure as to what would look better in the bid. Would it be these management companies proposed by the chairman or approved by the chairman or would it be Technical Cooperation Agreements? Do you remember that question being asked of you?

A I'm not sure whether it was a comparison against the management--the management companies versus the--I think those were two separate points.

Q Well, this is what this memo is all about, September 19, 1992. "The following points highlight the pros and cons of a corporate structure encompassing the provision of managerial services to Wharf Cable Limited by a set of direct technical transfer agreements from NYNEX and UIH versus formation

of JV managerial companies with the two entities. Do you see that?

A Yes.

Q And, the JV managerial companies is what the chairman had approved on the 17th, right?

A That's correct.

Q And then, you were asked to say how is it going to look in the bid to go forward like that as opposed to how would it look in the bid to do something like a technical transfer agreement; right?

A I was asked--yes, I was asked by Stephen because we had that conversation on the 18th where we had actually both decided that we would pursue the TTA or the technical--we had TCAs or TTAs, they were the same things. But, that we would pursue these TCAs on--you know, we had decided on the 18th. Meanwhile, the chairman had come back and had given us instruction on something else. This was really our approach to get back to our line to have the chairman come back and say, look, guys, TCAs are okay.

Q All right. So, what you were doing was trying to say let's have a Technical Cooperation Agreement because it's going to look at lot better than these management companies?

A It's really not whether it's looking a lot better. It actually makes it easier to do because, you know, setting up companies involve all sorts of different issues that we were not prepared to do given the lateness of this date.

Q Fundamentally, what you're looking at here in this document and what you're looking at with respect to the

chairman's instructions is how to package this thing for the bid, right? It's bid packaging?

A Well, it's not exactly bid packaging. It's also actually, you know, contemplating what we would do under both the management company structure and also the TTA structure going forward.

Q Well, I'll let the document speak for itself and I'm not going to argue with you about it. But, down where it says, "loss of partnership status", it says, "TTAs do not definitively reflect UIH and NYNEX as partners. However, we can achieve equivalent representation by highlighting the terms and nature of long term cooperation between the parties, in addition to the mention of the them as potential partners in the event of license award." Do you see that?

A Correct.

Q And, that's how to talk to the government about what these technical transfer agreements do; right?

A Yes.

Q And, the next point, "Interpretation of lower level of technical competency on the part of government. There is a possibility that government may see less technical competence in a TAA structure than a joint venture. This will depend on how well we can play up the terms of the TAA." Do you see that?

A Yes.

Q And, that was very much your thinking at the time, was it not; how to play up the terms of whatever it is so you can put it into your bid and put it in front of the government?

A Well, I mean, that was one of the issues, but if you also look at the pros, I mean, you know, one of the things I say in the third bullet is formation of the JV vehicles will require senior approval of management. We may not be able to obtain approvals in time.

Q All right. Let's look at the other pros and see if you're talking about packaging here.

A Well, yeah, okay, further, the formation of JV companies is perceived to render a level of liability that parties find unacceptable. These are the issues with regard to company formation that I talked about. They are serious issues that, you know, if we just sort of willy-nilly went ahead and set them up, you know, we would need to be very, very careful is what my point is in there. Whereas, from a TTA perspective, we could be much more definitive and actually be much more--well, I guess, definitive is the word or truthful is the word in terms of saying this is what these things are all about; whereas if you just set up a company, there's a lot of hidden things that would be misinterpreted by other people.

Q Mr. Fung, I'm not going to sit here and read all these. Would you agree with me that the primary thrust of this document is which is going to look better in the bid for the government?

A No, I would not agree that it's mainly for packaging purpose. I would agree that there is a serious--if you're asking the question, I would agree that there is a serious intent in this particular analysis to determine how these particular issues would be viewed going forward, not just after--just for September 30, but after the fact that these things have been signed or these companies have been formed, what would be the consequences?

Q Well, I'll tell you what, Mr. Fung, let's do this differently. Let's go straight to the Technical Cooperation Agreement itself and talk about that. You remember the Technical Cooperation Agreement, right? Do you remember that?

A Yes.

Q Why don't you take a look at Exhibit 532. That is the Technical Cooperation Agreement. I'd asked you a number of questions about this when you were here last and so I'm not going to go over old grounds.

A 532?

Q Yeah, that's the Technical Cooperation Agreement.

A I don't have it here.

MR. MUNSON: It's 531.

THE WITNESS: Oh, 531, okay.

MR. CHASE: Well, it's 532 on my copy.

THE WITNESS: Are we looking at the same thing?

MR. CHASE: Oh, yeah, I've got the one with NYNEX. Okay. Get 531. 531 will do you.

THE WITNESS: NYNEX is fine?

Q (By Mr. Chase) All right. 531 is fine. Mr. Fung, it's a fact, was it not, that this Technical Cooperation Agreement was for packaging purposes only; right?

A I don't believe that's the case. This was a signed agreement that was meant to be in existence. However, we had in our minds that it would be superseded ultimately by a shareholder's agreement.

Q Let me ask you to look at Page 434, Volume II, of you deposition? Are you there?

A Yes.

Q Line 4. Question, "Tell me as best you recall how the parties went from the letter of intent concept to the Technical Cooperation Agreement concept that was eventually adopted for the bid?" Answer, "It was under direction really from me, but you know, if this wasn't going to work for everybody, then let's just hit the TCA agreement and this was something that Stephen had instructed me to do, as well." Question, "And, would that have come roughly about September 19, right about the time of this letter of intent?" Answer, "Yes." "Did you voice this in a meeting among the various participants?" Answer, "I did." Question, "As best you can recall, tell me who was there and what you said?" Answer, "The same people that were there before and I just said that--you know, it's our view that the cleanest way to present our case to the argument was a Technical Cooperation partners and it would raise less issues than if we had a non-binding agreement and people would question the validity of a non-binding agreement which could be more damaging than if we just had it as a Technical Cooperation Agreement where the parties were considering making an investment in Wharf Cable." Question, "So, the paramount concern was how to package this thing for the bid?" Answer, "Correct."

Now, I'd like you to look over, please, at Page 451, same volume.

A Okay.

Q 451, I'll start at Line 7. Question, "I see. So, once again, we're talking about a packaging issue, correct?" Answer, "Yes. The entire document is for that purpose, for the packaging purpose." Question--

MR. MUNSON: What page are you on?

MR. CHASE: I'm sorry, 450. Did I say something else?

THE WITNESS: 451, you said.

Q (By Mr. Chase) Okay. 450, I'm sorry. Are you at 450?

A (No audible response.)

Q "Yes. The entire document is for that purpose, for the packaging purpose." "For packaging?" "Yes." "Was there ever any intent that this Technical Cooperation Agreement actually be an operative agreement among the parties?" Answer, "I think that, you know, we had talked about the fact what we had written in here was legitimate in terms of the services that could be provided, and that if at certain times that we had wanted to call on these, that we would, at least, have the basis of a working document that could be used." Question, "But, was it the intent of the parties in September 1992 that the Technical Cooperation Agreement become at some point an operative document?" Answer, "I don't think there was a strong intent, no." Question, "Do you think there was any intent?" Answer, "I can't be certain." Question, "Pardon me?" Answer, "I can't be certain."

"Did Wharf have any intent that this ever become the basis of a relationship between UIH and Wharf?" Answer, "Between UIH and Wharf?" Question, "Right?" Answer, "At that time,

no." Question, "Do you know if UIH ever intended that the Technical Cooperation Agreement be an operative document?" Answer, "I would say no." Question, "And, the entire purpose of the document, as you understand it, was packing for the purpose of the bid?" Answer, "Yes."

Now, that was your answers to those questions at that time, right?

A Yes.

Q In fact, the parties never intended for the Technical Cooperation Agreement to ever become operative, did they?

A They never intended for the Technical Cooperation Agreement to become operative for the fact that we thought that we would be signing a shareholder's agreement that would supersede the need for the Technical Cooperation Agreement. This Technical Cooperation Agreement wouldn't actually come into effect until license award. And, license award was--you know, at the time that I think we were putting in the bid--at least three to six months away. I'm not quite sure what the expectations were. So, between that time, we were fully expecting to consummate our shareholder's agreement. In which case, once that has been done, these documents would really--or these agreements would become null because we would have a new basis of understanding and a new basis for working together. So, what we were doing at this particular point in time was to address, hey, guys, you know, what are going to do in the interim for the fact that our ability to sign the shareholder's agreement was delayed.

Q What you were doing was packaging for the purpose of the bid, right?

A What we were doing was putting together a set of documents that would give us the credibility for the government in consideration of the bid. These were fully operative agreements as far as if--you know, they are legally binding documents. I mean, we actually sat around the table and joked and said, hey, you know, what if we can't become shareholders? And, everybody said, hey, this is a legal document. We still have this in our back pocket, and we can still work to this.

Q The parties never intended that document to become an operative agreement, did they?

A The parties intended that we would sign a shareholder's agreement and that would void the operative nature of these particular agreements.

Q So, the answer to my question is the parties never intended it to become an operative document; right?

A No, I--there was a condition on what I just said. The parties never intended this to be an operative document in the event--

Q Let me read--

MR. MUNSON: Objection, Your Honor. Mr. Chase asked this question again and the witness was not finished with his answer and he's entitled to finish his answer.

THE COURT: Go ahead?

THE WITNESS: The parties never intended this to be a document conditioned upon the fact that we were going to sign a shareholder's agreement that would then have new provisions as to how we would cooperate and new considerations for

operational support and everything else that's actually outlined in this TCA.

Q (By Mr. Chase) Well, tell me if this is true or false. Question on page 450, "But, was it the intent of the parties in September 1992 that the Technical Cooperation Agreement become at some point an operative document?" Answer, "I don't think there was a strong intent, no." Question--

MR. MUNSON: Objection, Your Honor. This isn't proper to just read the deposition to the witness. And, this part of the deposition, I believe, has already been read.

THE COURT: Overruled.

Q (By Mr. Chase) Question, "Do you think there was any intent?" Answer, "I can't be certain." "Pardon me?" Answer, "I can't be certain." "Did Wharf have any intent that this ever become the basis of a relationship between UIH and Wharf?" Answer, "Between UIH and Wharf?" Question, "Right?" Answer, "At that time, no." Question, "Do you know if UIH ever intended that the Technical Cooperation Agreement ever be an operative document?" Answer, "I would say no." "And, the entire purpose of the document, as you understand it, was packaging for the purpose of the bid?"

Do you see that?

A Yes.

Q And, that was your testimony, right?

A Right. And, the reasons why I answered no at the time of the deposition to both was again because of the fact that we fully expected to sign a shareholder's agreement between NYNEX and UIH shortly after the bid.

Q So, this was a fig leaf?

A Well, no, this was something that we had to put in, you know, and ii's a legitimate document as far as I'm concerned because we signed it and, you know, like I said, we joked about the fact that, hey, guys, well, what happens if we don't come to sign the shareholder's agreement? And, everybody said, well, then we'll just proceed on this legal basis because this is signed.

Q Well, let me stop you there.

A So, the intent of all the parties to actually execute this document, you know, as a document in and of itself, was legitimate. However, the intent of the parties to actually--you know, to think that this document would become operative was not there because we had fully expected to sign a shareholder's agreement, you know, shortly thereafter. So, you know, I think I'm pretty clear on these points. I'm not quite sure what you're getting at.

Q All right. Mr. Fung, let's just finish with this subject and then we'll take the break for a second here. It's a fact, is it not, that no services were ever provided under the TCA, were there?

A No, that's correct.

Q And, it's a fact that the license time came June 1, 1993 or thereabouts when the TCA would have kicked in and the TCA never did kick in; did it?

A Well, the TCA specifies a bunch of services and, you know, nobody performed those services. I don't know how the kick-in--you know, we actually didn't address the kick-in provision as to who had to initiate the kick-in of the TCA.

Q It's a fact, is it not, that nobody talked about "activating the TCA" until some six months later in December 1993 after license?

A That's right. UIH did not activate the TCA.

Q And, Wharf did not activate the TCA?

A That's correct.

Q And, nothing ever happened under the TCA except you attached it to your bid?

A That's correct.

MR. CHASE: Your Honor, I'd suggest we take the morning recess.

THE COURT: All right. About 15 minutes, please.

(10:20 a.m. - Jury excused.)

(10:22 a.m. - Recess accordingly.)

(At 10:45 a.m. on March 31, 1997, with counsel for the parties present, the following proceedings were had:)

THE COURT: Thank you.

(10:47 a.m. - Jury present.)

THE COURT: Go ahead, please?

MR. CHASE: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. CHASE RESUMES:

Q Mr. Fung, let me stay in the general time period in this last part of September 1992. I believe you testified on direct examination at that point in time Mr. Fries asked you if UIH could get an option and you said no. Do you remember that on your direct examination?

A I do.

Q Will you look, please, at Page 438 of your deposition? This would be Volume II. Are you there?

A Yes.

Q Now, you can see we're talking about--starting actually on Line 3 where it says, "Do you recall a meeting on or about September 22, 1992 where Mr. Fries was present and you were discussing the Technical Cooperation Agreement?" Answer, "Yes, on or about that date." Question, "And, do you recall a meeting on or about that date discussing an option for UIH to invest in the Wharf Cable system?" Answer, "No, I don't recall that." Question, "Do you recall that subject ever coming up prior to the time of the bid?" Answer, "Yes." Question, "In what context?" "In the same context we discussed yesterday about. If UIH had timing problems and so on and so forth, could we grant them an option to bridge the process, bridge the investment process?" Question, "This is one of those intermediate steps before a full agreement?" Answer, "Yes." "And, what was your reaction?" Answer, "When?" "Well, let me ask as of the time, say, of this Technical Cooperation Agreement?" Answer, "Had the issue been raised at the time of the agreement?" Question, "I'm asking you?" Answer, "I don't recall." Question, "Do you recall that it wasn't raised at this time?" "I don't recall." Question, "You don't recall one way or another?" Answer, "Right."

Do you see that?

A Yes.

Q Now, it's a fact, is it not, Mr. Fung, that you and Mr. Fries did have discussions about UIH having an option, right?

A Mr. Fries asked me if UIH could be granted an option at that time, yes.

Q Well, not just at that time, but at other times in this September time frame, you talked with Mr. Fries about UIH having an option?

A No. The specific instance was Michael Fries asked me--well, actually, he first disclosed the fact that UIH did not have enough money to come in for any piece of the investment and therefore they wanted a delay or, if possible, could they get an option meaning that they would have the right, but not necessarily the obligation, to invest in Wharf Cable. I immediately said, look, why would I want to do that? I said, you know, if you can't come up with the money, then surely you've got to show me that you can come up with the money first before we even talk about whether there is going to be an investment or not.

Q Well, Mr. Fung, I guess your memory is getting better with time, but why don't you turn to Page 164 of your deposition? That would be in Volume 1. Page 164 of your deposition, Line 23, "Did you discuss with UIH in this time frame UIH having an option to invest?" Answer, "We had considered whether that was an intermediate step that we could look at." "And, you say we had considered, you and Mr. Ng?" "No, Mike Fries and I had discussed that particular structure." Question, "Had you discussed it with Mr. Ng?" Answer, "I believe he was aware of it, yes." "Did you become aware from a discussion

with Mr. Ng that the concept of an option had been discussed with UIH in 1991?" "No, I don't."

Now, let me keep going. "Tell me about your discussion in this August time frame with Mr. Fries about an option?" "Just generally that, hey, you know, if we can't give you an absolute assurance today, is this some structure that would accommodate us, you know, essentially buying time to get that money put in place and also address all of these other issues that were outstanding with respect to structuring." "And, your response?" "And, my response was, yeah, let's work at it." Question, "And, did you work at it?" "I believe we talked about various ways of structuring it, yes." Question, "Did you advise Mr. Ng that you were going down this part?" "Yes."

Then, we keep going. "Did he have any comments on the subject?" "Comments on the subject; not until we had actually gone further down in terms of actually getting something down in writing." Question, "Until that point in time, he knew you were pursuing the subject and he didn't tell you to stop?" Answer, "That's correct." "Did he ever express to you that working out some kind of an arrangement like an option was inconsistent with anything Wharf would do?" Answer, "No." "Did anybody ever say that to you at any point?" Answer, "No." "Did anybody ever say to you at any point that Wharf simply doesn't give options to sell equity / to purchase equity?" Answer, "No." "Did you ever tell UIH that Wharf couldn't even consider working out some kind of an option arrangement?" Answer, "No." "In fact, that is something you considered with Mr. Fries?" Answer, "That's correct."

Now, Mr. Fung, look if you will, please, at Exhibit 1213. Now, Mr. Fung, you'll recall the last time you were here I questioned you about two documents referencing an option. One was the internal UIH document that we talked about, and

the other one was the Ernst & Young document. Do you remember that?

A Yes.

Q All right. I'm not going to cover that ground with you now since we covered that pretty thoroughly before you left. But, I am going to ask you about this document. This moves forward to July 15, 1993; right?

A Okay, yes.

Q Yes. And, this is one of these draft memoranda of understanding and this is your memo to Mr. Ng relating to the draft memorandum of understanding. Right?

A Correct.

Q And, in this draft, you call Mr. Ng's attention to UIH's option, Euroversion, lasts 180 days, etcetera; do you see that?

A Yes.

Q And, that is, in fact, something that you Mr. Fries had been working at for some period of time before this July 15, 1993?

A I believe the first draft was when I went to Denver. The first draft was produced when I went to Denver in June of 1993.

Q Well, this draft that we're looking at right now follows several rounds of negotiations; right?

A From June, yes.

Q Now, Mr. Ng did not tell you in connection with this document or at any other time that doing an option like that was inconsistent with Wharf policy, did he?

A No, in the sense of the technicality of an option, no. But, in the context of whether we're doing a one-party or two-party deal, those instructions were specific.

Q I'm not talking about one-party or two-party right now. I'm focusing on the concept of an option, right?

A Okay.

Q And, you put this into your memo, "UIH's option" and it doesn't draw any attention from you or from Mr. Ng, does it?

A Oh, no, it does draw attention. I mean, the whole point of explaining what this option was here in this piece of memorandum was to draw attention to the fact that the terms of this particular option were not the same as what you would construe as an unconditional option. This was a conditioned option.

Q Conditioned option meaning that if UIH decided to exercise the option, they still would have to show funding worthiness?

A That's correct, yes.

Q All right. And, that's always been UIH's understanding, hasn't it? That if they exercise the option, they still would have to show funding worthiness for a certain period of time?

MR. MUNSON: Objection to asking this witness what UIH's understanding--

Q (By Mr. Chase) As far as you knew it?

MR. MUNSON: Same objection.

THE COURT: Overruled.

THE WITNESS: Well, the point was we had demanded that UIH required--that we required of UIH to demonstrate their funding worthiness. That had never really been given to us at any point in time, even up until this point in time.

Q (By Mr. Chase) That's not my question, Mr. Fung. We'll have time to talk about funding worthiness in a little while.

A Okay.

Q What I'm talking about right now is options. Do you understand that?

A Yes.

Q And, the concept of an option in this memo was that UIH would have six months to exercise its option, and when it did so, it would have to prove 18 months funding worthiness to Wharf. Right?

A That's correct, yes.

Q Now, Mr. Fung, I want to take you back. I want to go back to the beginning of this whole shooting match, at least from your point of view. You show up on the scene in roughly late spring 1992?

A That's correct.

Q And, at the time you show up on the scene, Mr. Ng has been talking to various potential cable television partners?

A Yes, potential partners.

Q Pardon me?

A Potential partners, both cable and telecom, I believe.

Q Right?

A Yes.

Q And, when you show up one of these partners that they're talking to is UIH; correct?

A Yes.

Q And, you understood from them that UIH was a player in the international cable television game, they were investors, and they invested--they gave their expertise for equity; right?

A I understood that they were interested in pursuing investments in international cable operations and that they had talked to us about, look, you know, we really aren't in the business of being consultants, yes.

Q Yes. And, you knew that from Day 1?

A I'm not quite sure whether Day 1 would be the right charcterization, but I knew that pretty early, yes.

Q And, it was pretty clear to Mr. Ng, as well?

A I believe so, yes.

Q Now, on Day 1 for you, you understood that Wharf's strategy with respect to winning this bid was going to be to have strategic alliances and sell the concept of alliances in the bid, right?

A That was one element of what we would ultimately need to win the bid, yes.

Q Well, I'm not saying it's everything. I mean, you can't win the bid with just one element. But, it was an important element, wasn't it?

A We believe that to have alliances, number one, would counter any other bidders who might have similar alliances. That was one.

Q Let's talk--I'm sorry, I interrupted you.

A Okay. And then, two, to have alliances would also give us access to expertise.

Q Okay, good. So, if we could flesh that out a little bit. From Day 1--and I kind of like that expression. From Day 1--and, you can use a different one if you like.

A Okay, thanks.

Q You can say beginning, you can say, you know, "In the beginning, the heavens and the earth"--

A Genesis. Yeah, okay.

Q I'm not going to take you back that far.

A Genesis, I like genesis.

Q It's a good imagery for this time of the year. We're kind of sandwiched here. But, from Day 1, at least as far as you knew, the key competitor was going to be this Hutchison Wam Po, right?

A We thought that, yes. The key competitor could be Hutchison Wam Po.

Q And, you also believed early on and it was confirmed towards the end of the process that Hutchison would be forming an alliance with TCI, Time-Warner, ComCast; right?

A At the time that we spoke to them, that had not been confirmed, although we understood that they had had initial discussions with the Hutchison Group.

Q And, that would certainly be a formidable group, would it not?

A No more formidable than any other cable consortium. I think--how do I say--the real value lies still in the ultimate company in Hong Kong that's making the bid. And, alliances, as I said, would be one element.

Q All right. So, you believed that your competitors were going to be having foreign cable partners; right?

A Yes.

Q And, you believed that you'd better have them, too?

A Yes.

Q And, the key reasons for having a foreign cable company be your partners would be, one, to establish credibility with the government; right?

A Amongst many, yes.

Q Well, first of all, you would be able to put in a more credible bid if it's backed by the resources of various partners; right?

A Yes, and then that talks to the whole issue of technical expertise and starting up the system. And, really, in my mind, you know, one of the key reasons for partners of course, is that even if they're not their daily, it represents somebody that you can call up; at the end of the day, I mean if you're in real dire trouble. It represents somebody at the other end of the phone.

Q But somebody that's been there before had been through it before; right?

A Who had the expertise, yes.

Q And Wharf had these consultants who had been through the bid process, but never through the implementation and the operations process?

A No, I think that's a mischaracterization. I mean, these consultants had all been in operations with other cable companies and/or telecom companies before.

Q All right. Well, nevertheless, you still thought you needed alliances with outside investors. Another reason would be they were to validate your business plan; right?

A Yes, we would look to them, you know, to--to advise us in terms of portions of our business plan.

Q And the reason again being because these cable television companies have been there, they've seen it and they can test your assumptions?

A That's correct. Well, actually, we--we would want to test their assumptions would be more the case.

Q Test each other's assumptions so you can come out with the most realistic business plan possible; right?

A Well, yeah, as I said, I would want--I wanted them to give us their assumptions and then we would then incorporate that into our analysis of what we ultimately had to do. Remember, we're running the business.

Q Right.

A Right.

Q It's your business, you're inviting them in but you're using them for their expertise in this area?

A That's right.

Q And the other reason to have them was the government was indicating there was going to be a very aggressive implementation schedule; right?

A Yes.

Q And in order to--if you won the bid or even once your bid's in, you're going to have to move very quickly to get your system implemented; right?

A That was the expectation.

Q And so having a foreign cable television company could achieve two purposes; number one, it could comfort the government that you would be able to move quickly on implementation; right?

A Yes.

Q And then you could actually do it. Not just show them but actually do it with the help of an outside cable television company; right?

A Yes, that's right.

Q Okay. Now, early on in your discussions with UIH the issue of finances came up; right?

A Yes.

Q And when you got to Wharf and you looked through the file and familiarized yourself with--with what had gone on before you got there, did you see--and I'll ask you to look at Exhibit 192, it's going to be in the white binder. You find that? That's the notes of the Wharf Cable Weekly Coordination Meeting, January 21, 1992?

A Yes.

Q And that preceded you; right?

A Correct.

Q That's before day one?

A Before genesis, yes.

(Laughter)

Q (By Mr. Chase) Okay. Now, you notice on the--

A B.C. Okay.

Q --fifth page of the document--

A Okay. The fifth page, sir?

Q Yes, even before the heavens and the earth, it was determined that UIH's financial capability is not satisfactory; do you see that?

A I've got two pages in this. 192, you're talking about; right?

Q Yes. And it's--it's WC-2558.

A Oh, it is on the second page.

Q Yeah.

A Okay. 10.3.

Q Oh, okay. UIH's financial capability is not satisfactory; you see that?

A Yes.

Q And that's a conclusion that was arrived at before you showed up on the scene; right?

A It must be.

Q Now, but you were aware of it, right? You read the file, you saw what had gone--

A No, actually I--I wasn't aware of this particular document. I hadn't seen it at that time.

Q Well, you--

A When I first started.

Q --yourself, though, had early concerns about UIH's financial capability?

A That's correct. From my experience having, you know, been a banker to the cable industry, when--when Stephen had made mention of the name UIH, it had not come up in my list, you know, when--when I did some research on the company. And--and there was no financials and that usually indicated to me that it was either a very new company or it was either a very small company that didn't show up on--on our corporate database.

Q So you--you had concerns about their finances from day one? Okay?

A Sure.

Q And you also concluded from very early in the summer 1992 that UIH was not sufficiently capitalized; right?

A Well, I didn't make the conclusion, because we were actually waiting for information. I think just to take you through, you know, whether it's finances or not, I mean, what we looked at the other day when I was here in Court was their financial statements, but financial statements don't tell the whole story. There could be pockets of capitalization or rich investors somehow associated with the company that are not identified. And so we asked for all sorts of information, including lists of directors, you know, basically who the--who the legal counsel was and so on and so forth to--to see where the links to potential funding would--might come from.

Q Well, let me--let me ask you to look at your deposition, page 76, about when you realized what you realized. Page 76,

line 10. Actually, I could start on line 18. You see--you at 76, line 18?

A Okay.

Q "What was your conclusion as to whether they were sufficiently capitalized in the summer of 1992? Answer, that they weren't sufficiently capitalized. Question, pardon me? Answer, that they weren't sufficiently capitalized. Question, and how did you reach that conclusion? Answer, through a mutual discussion with the UIH management team. Question, and did you reach that conclusion fairly early on in the summer of 1992? Answer, yes." Okay?

Now, you had concerns about their finances and you reached the conclusion that they were not sufficiently capitalized and you didn't tell them to beat it?

A Well--(laughter)--that's a very loaded question. I mean, the fact is, what they were telling us at the time was that they were in a money raising process. We had been informed very early on in our meetings that, you know, they were talking with the Malaysian investors by name of William in the formation of this company called UIH Asia and they were also talking about a whole series of other fund raising efforts associated generally with their Asian--Asian expansion activities, I guess is the best way to characterize it.

So from that standpoint, you know, you just don't say, "Well, guys, you know, if today you don't have money then walk away;" all right?

Q Well, the fact--

A I mean, if--

Q I'm sorry.

A --they're actually coming back to you and saying, "Hey, wait a minute, but the--you know, today we don't have money but that's--that's beside the point because we're actually in the process of fund raising." So, you know, it's a continual. And what we were looking for was, look, guys, we understand you're fund raising, we don't have a problem with that. You know, everybody has to fund raise for any--any big new investment, but at some point in time you've got to be able to show that you've got--you know, demonstrate that you've got the financial wherewithal.

Q You didn't want to say good-bye to them because you did want their expertise; right?

A No, I--I think it's unfair to sort of match it on--on that basis. One, I think if you look at it on two separate basis. Yes, we would have liked UIH's expertises, we would have any other cable company's expertise who--who was, you know, compatible with what we're doing and who had a vision or who shared the vision of what we're doing.

On the other hand, okay, when you look at a potential partnership with a particular company, you look at that and you say, "Well, you know, is this guy going to be able to make it." Now, you don't say from day one, just looking at it and say, "Hey, guys," you know, just because they've got a weak balance sheet let's blow them out of the water.

You know, we were actually, I think maybe even too kind in sort of saying, "Hey, you know, we'll let you work at it. We'll let you convince us. You know, we're still"--back at that time and you're saying about genesis or day one, I mean, we were still, you know, a good fair ways from having to submit the bid, a few months away. And--and I know from my

experience that you can still raise a lot of money in--in a couple months time.

Q Mr. Fung, I don't want to take you back to day one, I want to take you back to May 29th, 1995, when you answered these questions at your deposition and I'd like you to look at page 79, line 11.

A Okay.

Q Are you there?

A Yes.

Q "Why did you continue discussions with a partner who was not sufficiently capitalized and who you believed was not going to get sufficiently capitalized?

"Answer: Capitalization was only one element of a potential partnership.

"Question: What was the other element?

"Answer: I think the other elements were what they could bring to the table and which other partners they could bring to the table, as well as that would help them through the--with the capitalization.

"Question: All right. So they could bring to the table, the first thing you said, what did you believe UIH could bring to the table?

"Uh-huh.

"What did you believe they could bring to the table?

"In terms of resources?

"Question: Expertise?

"Answer: Expertise.

"Question: Cable knowledge?

"Answer: Uh-huh.

"Question: Yes?

"Answer: Yes.

"Question: The ability to get the system implemented in the speed in which you would need it implemented?

"Answer: Yes.

"Question: Give credibility to your bid with the government?

"Answer: Yes."

See that?

A Yes.

Q Now, you continued despite the inadequate finances to have UIH out there doing what it was doing for the various reasons that we just went through; right?

A Well, no, again, you know, I think, you know, when you just read this, I mean, it's--what I get from this is they were--they were saying that they were going to bring partners on--on board. They could potentially bring other partners. They had

mentioned people like U. S. West, TCI, who--who we were talking to out on the other side because they had been in--in partnership with them in other situations around the world.

So I think all of this is--is we continued to talk with them because they were giving us continual assurances that they were going to be able to bring money to the table, whether it was their money, whether it was some other investor's money that they had to raise or whether they were going to have somebody come in and sort of co-op them, you know, from--from a joint venture that they would form with another company that would be brought to the table.

Q And this is--this is throughout the summer and into the fall of 1992; right?

A That's correct, yes.

Q And you continued to let UIH perform its services on Wharf's behalf all through that period of time; right?

A We continued to have discussions with UIH as to what this whole cable project was all about. I'm not sure--you know, services is--is the right way to construe.

Q Well, we'll talk about that in a little bit more detail as we go, Mr. Fung, but it's true, is it not, that as you got towards the latter part of the summer of '92, you did become comfortable with UIH's financial situation, at least more comfortable?

A No, I wouldn't say so because of the fact that, you know, the--the financial statements actually gave us less comfort.

Q Why don't you look at page 81 of your deposition? Looking at line 23 on page 81. "All right. Let's talk about

that. As of the time of the bid, has UIH become sufficiently capitalized, to your knowledge?

"Answer: No.

"As of the time of the bid did you believe that they would be able to raise funds either in the public markets, through borrowing or some way to become sufficiently capitalized?

"Answer: We had a better indication at that time.

"Question: That they would be able to do so?

"Answer: Right.

"And what was the indication that you had?

"The indication was that we had better understanding of where they were spending their money and to whom they were--had discussions regarding the procuring of financing, where they were, they were having discussions with various parties about raising financing and then they had disclosed a few of those discussions to us.

"Question: And did you find that UIH was being forthright with you in those disclosures?

"Answer: Forthright in the sense that they gave us a better idea of where they were looking for their money.

Now, it's also true, is it not, that Mr. Hudon--you remember Mr. Hudon?

A Yes, I do.

Q Mr. Hudon was talking to the banks during that period of time and he was keeping you advised of that and the banks were calling you as well; right?

A Yes, he was.

Q Right. And so when Mr. Hudon would go and talk to a bank and tell the bank whatever he would tell the bank about the relationship, you would hear back from that bank; right?

A I'm not sure I would hear back from the bank about UIH. I'm not quite sure what you're getting at. Hear back from the bank regarding what?

Q Well, regarding the fact that Hudon had been there and that he was looking for money and he was looking for money to put into the Wharf Cable project?

A He was--well, he was looking for money for--to--to fund UIH Asia, as I believe. And one of the purposes of funding UIH Asia was for Wharf Cable; there were other purposes associated with UIH Asia which--which I had no understanding or knowledge about.

Q All right. Now, I don't--I'm determined not to dredge up with you what we did last time with respect to the UIH Asia option memo and I'm not going to dredge that up, but you do recall us having that discussion last time?

A I do and--and--yes, I do.

Q And that related also to Mr. Hudon's efforts to be raising money for the investment into the Wharf project?

A I'm sorry. That meaning what?

Q The memo that we talked about last time, the UIH Asia memo. Remember, we spent some time with that?

A The UIH Asia offering memo?

Q Right.

A Yes.

Q Okay. Now, Mr. Fung, in addition to finances, you talked about the fact that from an early point you were concerned about UIH's compatibility with Wharf; do you remember that testimony?

A Yes, I do.

Q Do you remember talking about a June 1992 meeting where the UIH representatives were there and it became heated and--and at the end of the day you put your head on the desk; you remember that?

A Yes.

Q All right. Now, look at Exhibit 382, please.

A Okay.

Q Exhibit 382, I'll wait until you get there.

A I'm there.

Q Exhibit 382 is a August 24th, WCIL board meeting with the strategic planning documents attached; do you see that?

A Yes.

Q All right. Now, I'd like you to turn over to 01387. I'm not going to go through this whole document with you, I'm just going to spend a little bit of time on this. 01387 is towards the back of the document under a heading called Relationship Building. Are you there?

A Yes.

Q Now, this document is at the end of the summer--or not the end of the summer, but August 24, 1992; right?

A Yes.

Q And under Relationship Building it says, "The bulk of the time spent in building relationships with stakeholders has so far been with potential strategic partners. We have take"--probably should be using the machine. Let me start again on that. I'm sorry.

This is Exhibit 384 and it's 01387, Relationship Building. "The bulk of the time spent in building relationships with stakeholders has so far been with potential strategic partners. We have taken a very selective approach to insure that our partners have business expectations and cultures compatible with ourselves and that they, indeed, possess strategic value added complementary to our ambitions. This we have conducted through both verbal affirmations, as well as through the circulation of draft partnership terms." Do you see that?

A Yes.

Q And the partners that you're talking about there are the three listed above; UIH, Fox and NYNEX; right?

A Correct.

Q Now, one thing that's mentioned in this document is the circulation of draft partnership terms.

A Yes.

Q See that?

A Yes.

Q Now, I believe you testified on direct examination that for a good period of time in the summer of 1992, you were set--you were circulating separate partnership considerations to UIH from NYNEX; correct?

A Correct.

Q And the two were kept separate--intentionally separate for some time; right?

A Yes.

Q And the reason the two were kept intentionally separate was Wharf wanted to conclude that each one was compatible with Wharf before Wharf brought the two of them together; right?

A I think--well, that was one of--one of the issues between, you know, why the two were kept separate. You know, there are other issues involved in sort of playing--in sort of playing all of the various people. I mean, we didn't want, for instance, if we--if we were going to have, you know, five people, we didn't want five people coming back to us at the same time because we didn't want to deal on that basis. They may have different issues and so on and so forth with respect to what their investment would--would--we--then those issues may be privy only to those parties themselves.

Q All right. Well, whatever number of reasons there are, one of the reasons and specifically the one you testified on direct and referenced in that document I just read was for Wharf to be satisfied that it's compatible with UIH and it's compatible with NYNEX and, therefore, at some appropriate time Wharf believes it can bring the two of them together?

A Well, I--I mean, the reason why we had two separate or two separate documents out there, I'm not sure it's the issue of compatibility. It was the issue of, well, you know, do these terms make sense for those particular parties. So it's--it is not a compatibility test. I would say.

Q Well, tell you what, let's see if I can locate it real fast in your direct examination because I think you did describe it that way. If I can't do it real fast, we'll live with what we got. Well, speed is not one of my strong points today.

The point is this, if you were dealing separately with NYNEX and separately with UIH and you concluded that you were compatible with one of the two, you wouldn't go forward; right?

A If I concluded?

Q Wharf.

A If Wharf concluded that--that we weren't compatible, that--that's correct.

Q Okay. So in August, late August 1992 when you started doing these three-way letter of intent, you obviously had crossed some threshold where you concluded that both UIH and NYNEX had passed the Wharf test and they could now start dealing with each other?

A Correct.

Q Okay. And when and how they could start dealing with each other was something that Wharf reserved to itself; right?

A I'm sorry?

Q In other words, UIH didn't just get up and start talking to NYNEX and NYNEX didn't start talking to UIH. At some point in time Wharf decided it wanted to try to bring the two together; right?

A That's right. And when we--we brought them together, I mean, we basically brought them together over a table. I mean, I--and they had--they had, you know, they'd known of each other before. This wasn't a secret. I mean, UIH knew NYNEX was involved and--

Q Sure.

A --NYNEX knew UIH was involved.

Q But you were keeping them separate for purposes of your negotiation until you were ready not to keep them separate?

A We were--we were keeping them separate from the standpoint of looking at whether, you know, there was specific issues relating to each--one particular party. Actually, what we had sent out as--as documents addressed the fact that we would have three parties actually coming together, you know, in--in the venture.

Q Now--

A That document, you know, addressed the fact that there'll be other shareholders in--in the potential venture.

Q Mr. Fung, do you recall the joint venture considerations that you sent out to the various parties? Do you remember those?

A Vaguely, yes.

Q Do you remember them ever, in anybody's joint venture considerations, making any reference to three parties?

A Yes, it--it did because there was a mention of shareholders over and above, you know, Wharf.

Q Well, I just--

A There's a mention of multiple shareholders there.

Q I just grabbed one at random. Why don't you grab 253.

A All right.

Q Now, I'm just using this one at random, and you're welcome to--you're welcome to find any other one that you want to, but could you show me somewhere in this document where UIH was supposed to anticipate that there would be more than two shareholders? And by two I mean UIH and Wharf.

A Actually, I would like to see a later document, if somebody could give me the reference.

Q Well, I'll tell you what. This is going to tax my ability to lay hands on things quickly, but I'll--I will accommodate you. So you don't think it's in the earlier document, then?

A Well, I'm not--I'm more familiar with the later ones because they're closer to my memory.

Q Well, here we go. Why don't you take a look at Trial Exhibit 363. This is a second draft of the document that we just looked at.

A Yes, I see it.

Q All right. Now, point to me where you're looking at. Now, this is August 18th, so this is right before you're about to have the first three-party letter of intent.

A Yes.

Q Okay. Do you notice that somewhere in this document?

A Well, the--the reference is--is actually, you know, in the section on page 3, Fixed Telecom Network, Section 6. And it actually continues over.

Q Page 3?

A Yes.

Q This talks about fixed

A Fixed telecom network.

Q --telecom network?

A This was a very important clause in the document in the sense that it had to address if Wharf Cable ultimately bid for a new license in the form of this telecom license, what would the shareholders do. Okay.

Q And tell me where it says something about having more shareholders than just Wharf and UIH?

A Well, it's actually on page 4 in the first paragraph.

Q Okay.

A "In the event of Wharf Cable shareholder and non-funding shareholder cannot or does not wish to fulfill it's obligations," blah, blah, blah. Well, it's right on--on the last--it's right on the last line. "Initially pro-rateably or in proportions as may later be agreed to strictly among the funding shareholders."

Q So you say that that language right there in that clause on September 18, 1992, is the dead give away that there's going to be more than two shareholders to this thing?

A Well, I wouldn't say it's a dead give away, but it was already understood, as I think I testified before, amongst all the parties receiving this document that we were looking for a three-party deal. And--and I mean, you know, I--it doesn't need to be a dead give away in anything that I have to--I have to send to people who already have that understanding.

Q Well, we've gone through earlier today, Mr. Fung, about what you did and didn't tell people with respect to that, so I'm not going to dredge that up, but I guess we can all agree that by the end of August, you are circulating three--three-party deal; right?

A That's correct.

Q All right. And by that point in time you had made certain decisions and satisfied yourselves as to the compatibility of UIH with Wharf; right?

A Yes, that's right.

Q And as a matter of fact, both you and Mr. Ng believe that UIH with respect to its business goals and its approach was, indeed, compatible with Wharf; right?

A Yes, myself and Mr. Ng shared that. I'm not sure that members of our operating team shared that view.

Q Well, okay. So you're not saying it was unanimous, but at least as far as you and Mr. Ng were concerned, it was fine?

A That's correct.

Q And Mr. Ng was the guy with the authority to go forward; right?

A Well, no, ultimately the Board had the authority to go forward.

Q Well, we understand that's what you're saying, but before we get to the Board it's Mr. Ng and Mr. Woo; right?

A Yes, it would have to go up--go up the chain of command.

Q Now, Mr. Fung, let me--let me move it forward just a little bit here. WE've talked about the original need for having cable television companies as investors in your project. I want to know talk about after the bid is submitted, after September 30, 1992, and Wharf is the only bidder; right?

A Yes, it is.

Q Now, at that point in time, there was a genuine concern, was there not, that the government may not grant a license at all?

A If they--if they found--yes, if they found that, you know, our bid was lacking, they might grant a license.

Q Meaning that they were going to be scrutinizing your bid very carefully?

A Well, we had expected that from the beginning, or genesis.

(Laughter)

Q (By Mr. Chase) Or even pre-genesis; huh?

A That's right.

Q All right. So if they were going to scrutinizing your bid, certainly until they told you you had the license, there was going to be no relaxing as far as Wharf was concerned; right?

A That's correct. We were anticipating questions to be asked of us about our bid.

Q And this was going to be a particularly--this was, not going to be, this was a particularly tense time at Wharf now, even though you were the only bidder?

A Well, I think we--even though we were only bidder, I think we--we did take a sigh of relief when we found out we were the only bidder in the sense that we would not have to be in a competitive framework, i.e. that we would then sort of just, you know, have to just go through in a methodical basis all the questions the government would ask of us.

Q But you deemed that to be potentially a greater threat than having competitors?

A Oh, no. No, no, no. I don't think so. Anytime that you're in a situation where there's a competitive environment, I can assure you that the threats are a lot--loom a lot larger than--than if you're in a single bid environment. I think that's what everybody in business achieves to it--you know, tries to achieve anyway, is to try to get into a single bid situation.

Q Well, all right. Without arguing that point with you for a moment, we can agree, can we not, that you were very concerned that you keep the best face for the government?

A We were very concerned--well, we were very--we had, you know, the understanding that we needed to be very responsive to government questions that would come across in review of our bid.

Q Okay. And you wanted to make sure your alliances held together?

A We wanted to make sure that we had--we had people that were with us, you know, who were allied with us and--and could, you know, would present the best face.

Q Well, you particularly didn't want the government to see alliances falling apart at this time because of the HKCC experience; right?

A That's correct.

Q All right. And also at this point in time not only did you want to keep the image up, but at this point in time it was anticipated there would be a very short time frame for implementation; right?

A Yes.

Q Now, let me ask you to look at Exhibit 565, if you will, please. Do you have Exhibit 565?

A Yes.

Q Now, this is a handwritten document from Mr. Ng to Mr. Melvyn Sears, faxed to Mr. Sears when Mr. Ng was in North America. Have you ever seen this before?

A I don't believe--well, I have in--in the preparation process only.

Q Oh, I see. For deposition and for trial?

A Yes.

Q Okay. Now, in this document Mr. Ng references the fact that Mr. Sears will not be assisting in the implementation; do you see that?

A Where?

Q I have given it some highlight. Let me make sure. It says, "I have"--you and I are going to have to struggle through this a little bit. "I have on more than one occasion asked you individually to consider staying on full time in the implementation team, but I understand when I was advised of the reasons why you cannot or cannot make commitment to accept my invitation." Do you see that?

A Yes.

Q In fact, Mr. Sears wanted to go back to England, didn't he?

A Actually, I wasn't quite--I wasn't aware of the circumstances at the time.

Q All right. But then Mr. Ng does go on to say, "For their part I see NYNEX and UIH actively participating in the implementation." You see that?

A Yes.

Q And that is, in fact, what happened; right? At least as far as UIH.

A Well, actually, I think that even during the implementation phase, all of these people stuck with us, too.

Q Well, nevertheless, Mr. Ng did involve UIH considerably in the implementation from that point forward, did he not?

A Yes, UIH had played a role, yes.

Q Now, I want to fast forward you a little further here. And I want to call your attention to the point in time where NYNEX, you remember NYNEX? Have we mentioned NYNEX?

A Gee, I don't recall.

Q I'd like to introduce a new concept to this case, Your Honor. It's called NYNEX.

THE COURT: You'll have to amend the complaint and start all over.

(Laughter)

THE COURT: Different jury.

(Laughter)

MR. CHASE: You people wait here; we'll be right back.

Q (By Mr. Chase) Mr. Fung, at some point in December 1992, your company found out that NYNEX was not prepared to invest in the cable or telecom project; right?

A Correct.

Q All right. Now, notice I haven't used the word quit, dropped out, walked away. I tried to make it as unarguable as possible; right? Right?

A Yes. And I answered yes.

Q Right. Now, NYNEX is not going to be with you as of some time towards the end of December, 1992?

A Sorry? NYNEX is not going to be with us?

Q NYNEX is not going to be investing with you. They're not going to make that decision until some time later; right?

A That's right. NYNEX was going to review and then upon station launch that they would make the review again.

Q Now, this at that time caused internal concern at Wharf; did it not?

A Well, yes, it did.

Q And it caused internal concern at Wharf over the image of the alliance falling apart; right?

A That was one of the--one of the issues that it caused concern about, yes.

Q And it caused concern at Wharf that the effect of NYNEX pulling out would effect UIH to pull out; right?

A No, actually it caused concern that the effect of NYNEX pulling out would sort of kill our concept of a three-party transaction. And--and that--that would mean that we would have to put the UIH, you know, ability to invest in Wharf Cable on review.

Q Why don't you look at page 566 of your deposition?

A Okay.

Q You there?

A Yeah.

Q 566, line 14. "Now, at the time you learned of the NYNEX pullout, was there a concern at Wharf that this would perhaps influence UIH to pull out from the project? Answer: I think that had been asked as a potential question. Question: Asked internally? Answer: Within Wharf, yes, internally. Question: Well, it would have been a matter of concern if they pulled out at that time, would it not? Answer: I mean, we were concerned whether that would trigger any action on the part of UIH, yes." You see that?

A Yes.

Q Now, I'd like you to look at 567, line 19. You there?

A Yeah.

Q "Wharf certainly didn't want UIH to pull out at this time, did it? Answer: Wharf didn't want--I think Wharf wanted to be able to stand behind what it put together in the bid."

And then I want you to look at page 571, line 4. Actually, I'm going to start at 570, line 21. And I'm asking you at that point about a memo that was written by Henry Wise that I think we've mentioned once or twice in the course of these proceedings. And my question to you is: "Now, UIH was providing technical support and specialist expertise primarily in the cable area; was it not?

"Answer: Correct. And Mr. Wise's statement about UIH there was a true statement as of the time of this memo; correct?

"Correct.

"And UIH continued to provide those kinds of services after the date of this memo; correct?

"Answer: What services again?

"Question: Well, the services described by Mr. Wise and that is full technical support and specialist management expertise?

"Answer: Yes.

"Question: And it was important to Wharf that the Hong Kong government perceive that UIH was providing those services; correct?

"Answer: Yes."

Okay. Now, those were the questions asked and the answers given at your deposition; correct?

A Correct.

Q Now, at this time in order to keep this perception up--by the way, did you ever see Mr. Wise's memo?

A I'm not quite sure to--which one you're referring to.

Q Did you ever see this memo, Exhibit 887?

A Where is that?

Q 887.

A 887.

Q You can look on the screen and just tell me whether you've seen it--

A Well, that screen bothers me.

Q --I'm going to do--

A Sorry.

Q Going to do everybody a favor here and not read from it.

A It's flickering. So--

Q Okay.

THE CLERK: This screen is not on.

THE WITNESS: I switched it off deliberately.

THE CLERK: Oh, you switched if off.

THE WITNESS: Okay.

Q (By Mr. Chase) Have you ever seen that before? Did you see that at the time it went in?

A No, I don't think I did.

Q Did Mr. Ng discuss with you the advice that he had received from Henry Wise?

A Sorry. This is--let me take a few moments just to take a look at this.

Q Please.

A Where in this document is--is the--

Q First I'm just asking you whether Mr. Ng ever discussed with you the advice he received from Mr. Wise. And this document appears to contain advice.

A I think I have seen this, yeah.

Q Did you see it in December 1992 or early January '93?

A I can't recall.

Q Did you see it in preparation for your deposition and for trial testimony?

A This one I can't recall either.

Q Do you remember--I'm not going to ask you to go through this unless you want to, but do you remember Wharf being very concerned about the public image that it would have to give in light of the NYNEX pullout?

A Well, there was no--there was no doubt that if people were to ask questions or if the government were to ask questions of us, regarding the status of NYNEX that we would have to reveal to them that NYNEX had deferred their consideration of the Wharf investment, you know, to our station launch. And--and that in itself, you know, created an extra time element in terms of the consideration.

What we had expressed in the bid was that NYNEX was still going to come in as partners, you know, alongside with UIH in the form of the Technical Cooperation Agreement and that still stood--stood firm, because that--that was an understanding that we had that, you know, and that was something that we were committed to.

Q Mr. Fung, the advice given to your company by Mr. Wise and the advise followed by your company was to try to give the impression that nothing changed and your alliances with NYNEX and UIH was holding together and it wasn't another HKCC situation; right?

A I'm sorry. I'm going to have to read this. You want me to read this thing, because I--

Q Well, I'll tell you what--

A --I honestly don't know what the advice is.

Q Let me--let me skip you to another document, one that--

A Okay.

Q --you did see. Why don't you look at Exhibit 884?

A Okay.

Q This is December 28, 1992, from Mr. Ng to you and Vince and that would have been Vince Lam?

A Correct.

Q And this is about, "I've spoken to Paul Duffy about the revised note I circulated to you guys this morning. In essence, line to take with UIH, et cetera." Remember that?

A Yes.

Q And you got a copy of Mr. Ng's line to take with UIH and line to take with the Hong Kong government; right?

A Yes.

Q And if you'll look over at Exhibit 918, please. Exhibit 918 is the line to take with UIH and the line to take with the Hong Kong government and I'll ask you about the unedited portion. Fortunately, Mr. Woo doesn't mark on it because it's easier to read, but you're welcome to look at either one, if you want. Do you remember this document?

A Yes.

Q And this was shown to you at or about that time?

A That's correct.

Q Now, it makes reference in this document in various places about the Technical Cooperation Agreement. It says, "Wharf"--I'm looking under the line to take with UIH. It says, "Wharf also values highly the strategic strength UIH brings to the project and would welcome UIH's continued participation through the Technical Cooperation Agreement." You see that?

A Yes.

Q And then it goes on, "The line to take with the--with the Hong Kong government,"it says, "NYNEX and UIH will continue to give full support to the application and the implementation of the project under the Technical Cooperation Agreement; you see that?

A Yes.

Q Now, these references to the Technical Cooperation Agreement here are just simply false; right?

A No.

Q Well--

A I don't know why you'd say that.

Q Well, let's--let's--let's walk through it. Maybe you'd better get--maybe you'd better get volume two of your deposition handy.

At the time of this memo, no services or support had been given by UIH under the Technical Cooperation Agreement; had it?

A They weren't required until--until license award.

Q So no services or support had been given by UIH or NYNEX under the Technical Cooperation Agreement, as of this time; right?

A Essentially, yeah. The Technical Cooperation Agreement was signed, but services were not required of any part at this point in time.

Q And at this point in time there had been absolutely no expression of intent by UIH to provide services under a Technical Cooperation Agreement, was there?

A Well, again, you know, until we actually get the license, there's no point in talking about, you know, services to be--you know, to be worked on.

Q Now, look at page 563 of your deposition, Mr. Fung. "Question"--I'm starting on line 1--"Now, up to that period of time had any services or support been given by UIH pursuant to the Technical Cooperation Agreement? Answer: No. Had any such services or support been given by NYNEX pursuant to the Technical Cooperation Agreement as of the date of the document? Answer: No."

MR. MUNSON: If I may, Your Honor. Objection. So far the testimony in the deposition is consistent with the testimony here in trial. So I don't see it as impeaching or what the reason is to read the testimony.

MR. CHASE: Your Honor, I'm trying to put into context what I'm going to read to him.

THE COURT: All right. Overruled.

Q (By Mr. Chase) Okay. Let me keep reading. "As of the date of this document and going forward, had anybody from UIH expressed the intent to you that UIH would provide support pursuant to a Technical Cooperation Agreement? Answer: From this date forward? Question: Yes. Answer: I don't recall." See that?

A Yes.

Q Now--

A And that's entirely consistent with what I just said. I mean, look, you know, you asked--it was asked of me from this--

Q Well, let me--

A --date forward whether anybody had approached me. Well, it didn't matter from this date forward because we had actually signed that agreement back in September and--and as far as we concerned, it was operative.

Q Mr. Fung--

A But the fact is, we had not been awarded the license.

Q --look at page 558 of your deposition. Are you at 558?

A Yes.

Q Now, you just said a moment ago, as far as you were concerned it was operative. Look at--look at 558. Huh. Oh, sorry. Look at 558, line 18.

A Yes.

Q "Now, it's your testimony that the parties didn't intend for the TCA to ever become operative; correct? Answer: Correct." See that?

A Yes, and this again goes back to our previous, you know, discussion was the fact that, again, that we expected--fully expected at the time that we signed the TCA documents that it would be superseded by a Shareholders Agreement. It did not go to the fact that these TCAs were not operative. They were signed, they were intended to be legally binding documents between the parties, but we fully expected that they would not

actually become operative for the fact that Shareholder Agreement would be signed.

Q Mr. Fung--

MR. MUNSON: Your Honor, may I request at this point that this--

THE COURT: Yes.

MR. MUNSON: --on this--on the next page--

THE COURT: All right.

MR. MUNSON: --a fairness reading of one question and one answer, 559.

MR. CHASE: On?

MR. MUNSON: 559, line--

MR. CHASE: Sure.

MR. MUNSON: --18 through 23.

MR. CHASE: Let me get there. 559, line 18?

MR. MUNSON: Through 23.

Q (By Mr. Chase) Okay. This is on reporting to the Hong Kong government. "Question: Is it your testimony that there was no need to report to the Hong Kong government that there was no intent that the Technical Cooperation Agreement become operative? Answer: Yes, because it would be superseded by the potential Shareholder Agreements." Is that your answer there?

A Yes, it is.

Q All right. Now, let's keep that one in mind for a minute. We're talking about January 1993 or late December 1992 when you're doing this lines to take; right?

A Correct.

Q Right?

A Yes.

Q And at this point in time there's no Shareholder Agreement; right?

A Correct. There's only a draft.

Q Pardon me?

A There's only a draft outstanding.

Q Nobody's ever signed a Shareholder Agreement; right?

A That's correct.

Q And according to your testimony and Mr. Ng's testimony, that unless you had three parties there wasn't going to be a Shareholder's Agreement; right?

A That's right.

Q And at this point in time you are told that at least for the next 11 months NYNEX isn't going to be considering a Shareholders Agreement; right?

A That's correct.

Q And at this point in time when yo know all of this, you and Mr. Ng and Mr. Woo approve this lines to take where you tell the government the parties anticipate providing full support under the Technical Cooperation Agreement; right?

A That's correct.

Q Now, Mr. Fung, following this episode, you have Mr. Ng reporting this to you, this is Exhibit 951. See that?

A Okay.

Q Now, in connection with this, all Mr. Ng told you was that he told UIH that NYNEX was pulling out; right?

A I think he told UIH--no, I think he told UIH just exactly what NYNEX had told him, which was that they were deferring their decision until station launch.

Q All right. But he didn't tell you anything about having read to UIH the lines to take or told UIH that it would all be put off until station launch or that you needed three partners; he didn't tell you any of that, did he?

A Well, I believe in the--in the subsequent conversation I had with Mr. Ng that he did communicate the exact same thing, that we--you know, we had also decided that we were actually going to put on our hold our consideration of partnership arrangements or Shareholder Agreement until station launch. And that was communicated to UIH.

Q Look at page 554 of your deposition, please.

A Yes.

Q I'm going to read to you from two separate areas. First of all, 554 12 to 22. "So, do you know if when Mr. Ng called UIH he basically read them this line to take? Answer: I would not know of that. Did he tell you anything about what he told UIH? Answer: Not specifically. Question: Did he just generally tell you that he had told UIH about NYNEX? Yes, he did. And that's the extent of your recall about what he told you? Answer: Correct."

Now I'm going to read you--

MR. MUNSON: Objection, Your Honor. Again, I--I don't believe that this is inconsistent with the witness's testimony. The witness was asked what Mr. Ng told him and the witness said that Mr. Ng told him that Wharf was its ownership decision on hold until a station launch. That's what--that's what the witness said. And I don't see how this testimony that was just read is inconsistent with that. I just don't think it's proper impeachment and reading the deposition testimony suggests that there's something inconsistent. I just don't see what is.

MR. CHASE: Well, Your Honor, Mr. Fung is sitting here testifying as to what they're telling UIH. And as a matter of fact, they're not. And that's what he testified to at his deposition.

THE COURT: The objection's overruled. Go ahead.

Q (By Mr. Chase) Mr. Fung, one more. Look over at Exhibit--at page 575, same volume, line 8. And then I'm asking you about Deposition Exhibit 2513, which is the same thing about I spoke to Mark Schneider; no violent reaction. And here are the questions and answers at that time.

"Let me ask you to look at Exhibit 2513. This is another mercifully short document. It's a memo from Mr. Ng to you dated January 14, 1993, regarding a conversation he had with Mr. Mark Schneider?

"Answer: Yes.

"Is this what you were referring to earlier about Mr. Ng reporting to you his conversation with Mr. Schneider?

"Yes.

"Question: Do you have any recollection of what Mr. Ng reported to you other than what's contained on Exhibit 2513?

"Answer: No, I don't recall. And looking at the memo here does not refresh your recollection as to anything else that Mr. Ng may have told you about that conversation?"

Hold on. You'll get your fairness objection.

"Answer: No."

Okay. Now, that's the questions that were asked of you and the answers you gave at that time; right?

A Yes, and it's the same one that, you know, I just gave to you, that Stephen suggested to them that we would defer ownership.

MR. MUNSON: May I ask--

Q (By Mr. Chase) Well, hold on, Mr. Fung, that's not what you said in your deposition.

But go ahead, you do a fairness reading.

MR. MUNSON: Maybe I can help on this. Would you read on page 576, just lines six through 11?

MR. CHASE: I'll keep reading on 576 so it stays in context.

"Now, the second paragraph indicates that Mr. Ng suggested deferring ownership discussions. Do you see that?

"Answer: Yes.

"Do you remember Mr. Ng telling you anything about that discussion relating to--deferring ownership discussions?

"Answer: Yes. We had, as a result of the impact of NYNEX's pullout, decided to defer ownership discussions up until the station launch."

MR. MUNSON: Thank you.

MR. CHASE: "And did Mr. Ng report to you what Mr. Schneider's reaction was about that?

"No, I interpreted from this memo that there was no violent reaction.

"Well, I'm asking whether it was a violent--I'm not asking whether it was a violent reaction, but I'm asking whether you recall any report to you of what Mr. Schneider said in response to that.

"Answer: No."

MR. MUNSON: Your Honor, objection. There's been no question asked of the witness yet about Mr. Schneider's reaction. Mr. Chase is simply reading deposition testimony on

that topic, suggesting that there's some inconsistency and he hasn't been asked a question. I don't think that's fair to the witness.

THE COURT: Right. Sustained.

MR. CHASE: All right. I won't read it again.

Just for the record, Your Honor, when--when a line is asked as a fairness, if I think the fairness requires finishing out a thought, that's why I keep going sometimes.

THE COURT: All right.

Q (By Mr. Chase) Now, Mr. Fung, let's talk about what kind of mileage Wharf got out of UIH. You talked about the fact that--that you had the cable television company in there, it was going to give you your credibility with the bid--with the government for your bid. And, in fact, there is prominent mention of UIH in the bid; correct?

A Well, it--I mean, there is mention of UIH in the bid.

Q Well, several instances--

A Amongst--I mean, there's a lot of volumes. I don't believe all these volumes contain the word UIH in it.

Q All right. Let's--I can probably agree with you on that.

Why don't you look at Exhibit 626, please. Exhibit 626 is a memo from you to Mr. Ng of October 17, 1992, and there's handwriting at the bottom. I take it none of that handwriting's your's?

A That's right.

Q You've got Ng on the right and Woo on the left?

A Looks like it, yes.

Q All right. And the document that's attached to this memo is entitled, "Wharf Cable, Our Investment Vision by Emil D. Y. Fung;" that's you; right?

A Correct.

Q Okay. And you're having a vision here and you go through certain portions of this talking about why Wharf Cable is going to be such a successful project; do you see that?

MR. MUNSON: Your Honor, I have to object. There's no foundation for the witness having any vision.

(Laughter)

THE COURT: This is really an ecumenical time of year, isn't it?

(Laughter)

THE WITNESS: There's something up here; I don't what it is.

MR. MUNSON: But there's no foundation, Your Honor. He may have, but I think Mr. Chase--

(Laughter)

MR. MUNSON: I think Mr. Chase would have to lay a foundation for it.

Q (By Mr. Chase) Mr. Fung, when did you start having visions?

(Laughter)

THE WITNESS: When I was born, when I opened up my eyes, I think.

Q (By Mr. Chase) All right. Good. Now, let's talk about your investment vision. October 17, 1992, and just if I could characterize what you do in this document without reading all of it until I get to the part that I want to focus you on, what you're talking about--this is to your investors; correct?

A This would be--not necessarily to the investors. It was probably to the public at large.

Q Well, it was primarily to your institutional investors, that would be your large investors; correct?

A The institution investors and then there'll be financial parties like potential bankers or existing bankers, so on.

Q All right. And this document would be fairly characterized as one in which you're talking about why you think the Wharf Cable project is going to be a success?

A That's correct.

Q And one of the reasons you give towards the end of it is, after you outline the factors, and I believe this document's in the jury book. So people are welcome to read at their leisure why you think this was going to be such a smashing success, but if you look over on 025773; do you see that?

A Yes.

Q Okay. I'm going to read part of your vision here. "The factors outlined above combine to form an investment vision that enables the achievement of sustained long-term profitability and attractive financial returns. This view is shared by Wharf Cable technical partners NYNEX Network Systems Company and United International Holdings. As telecommunications companies with substantial experience in developing and operating cable and telephony systems around the world, both NYNEX and UIH have been integral to the development and verification of Wharf Cable's business plan. As Wharf Cable proceeds toward implementation, it's technical partners will continue to provide critical managerial expertise to insure the achievements of the plan's operational and financial objectives.

"Complementing Wharf Cable's technical and managerial rescues will be the financial strength and commitment of the project sponsors. In this regard, Wharf and its partners have taken a comprehensive review of all critical, strategic and operational aspects of the cable project to assure ourselves of the project's financial viability under a multitude of adverse scenarios. Our collective analysis points to the conclusion that the long-term business underpinnings of Wharf Cable are indeed solid and that the financial rewards of the project fully justify the project's sizeable capital investment."

Do you see that?

A Yes.

Q Now, this, in fact, was distributed to your investors and it was distributed to the public; correct?

A I--I handed this off, I think, to the--to the corporate communications department. I'm not aware how it was distributed.

Q And it would have been made available to the broadcast authority as well?

A Again, I'm not aware how it was distributed.

Q Let's look at Exhibit 668, please. Exhibit 668, you're making a speech, but you're not having a vision here.

This is October 29th, 1992, and this is your speech to the broadcast authority; right?

A Correct.

Q October 29th was actually a pretty big day. That's when a lot of people make speeches to the broadcast authority; right?

A Yes, that was--that was the Wharf Cable presentation to the broadcast authority.

Q That was the day; right?

A Yes.

Q All right. And on that day, you told the broadcast authority, "Complementing Wharf's contribution will be the assistance provided by our two strategic technical partners, NYNEX Network Systems and United International Holdings. Both partners possess many years of international development and operations expertise in cable TV and are ideally suited to assist Wharf Cable in realizing its financial and operating objectives. It is Wharf's intent to invite our strategic partners to join in the ownership of the project upon license award. We believe that such a union will better position Wharf Cable to bring to Hong Kong the latest in technology and international communications services." See that?

A Yes.

Q Okay. Now, that's the message that you wanted to get across to the broadcasting authority on that day; right?

A Yes, that's part of my vision.

Q And you wanted the broadcasting authority to leave that room with the full understanding and impression that they were going to be dealing into the future with a union, a union of UIH, NYNEX and Wharf that was going to bring to Hong Kong the latest in technology and international communication services?

A Well, as it says there, it is Wharf's intent to invite our strategic partners into this union.

Q That's right. And you ever told the broadcast authority that unless both of them signed up, you weren't going to invite either of them, did you?

A No, I don't think we did.

MR. CHASE: Your Honor, it's probably a good place to stop for lunch.

THE COURT: Okay. Try to be back by 1:15. It's the first day of that other trial, so we might be a little late getting started. Don't make a federal case out of it, just get here when you can.

(11:59 a.m. - Jury excused.)

MR. MUNSON: Your Honor?

THE COURT: Yes, sir. You want to talk some more?

MR. MUNSON: No, I don't say that, I just wanted to say, I didn't mean to be irreverent either to the season or to Your Honor with my objection on the vision point. I hope it wasn't.

THE COURT: Listen, St. Patrick's Day is over; any other holiday is not a matter of great interest.

(Laughter)

MR. CHASE: Your Honor, we took him seriously.

(12:00 p.m. - Recess accordingly.)

AFTERNOON PROCEEDINGS

(At 1:35 p.m. on March 31, 1997, with counsel for the parties present, the following proceedings were had:)

THE COURT: Thank you. Sorry to keep you waiting.

(1:36 p.m. - Jury present.)

THE COURT: Okay. Go ahead.

CROSS-EXAMINATION BY MR. CHASE RESUMES:

Q Mr. Fung, did you have any visions over the noon hour?

(Laughter)

THE WITNESS: I tried, but it's a little tough with the media around.

Q (By Mr. Chase) How about a vision of being out of here at the end of this day?

A That would be good.

Q Sounds good, huh?

A Yeah.

THE COURT: From your lips to God's ears, Mr. Chase.

(Laughter)

THE WITNESS: You're committed now.

Q (By Mr. Chase) I'm into talking to him these days.

Mr. Fung, I'm not going to go through every document and everything that happened during the--during the months when UIH was in there working on your implementation, but I am going to call your attention to things that you were a participant in and ask you if it was, in fact, your view. And if you'd look, please, at Exhibit 677. Are you there?

A Yes.

Q Now, 677 is a October 29, 1992, memo from you to Mr. Ng regarding responses to questions from broadcast authority regarding NYNEX and UIH; do you see that?

A I'm sorry. Did you say 667 or 677?

Q 677.

A I'm sorry. Is it in this bigger binder?

Q Oh, you know what? It's probably in that group of documents I--

A Okay.

Q --dropped on your thing this morning. It's a very short document.

A Okay. Got it.

Q You got it?

A Yeah.

Q Okay. You'll notice on the screen I've highlighted just certain portions of it.

A Uh-huh.

Q I'm being facetious, Mr. Fung. I wanted to see if you were on your toes still.

A Sorry.

Q With respect to this document, Mr. Fung, it said--this is the preparation that you and Mr. Ng are going through as to how you're going to respond to questions from the broadcast authority; right?

A Yes.

Q And the response is--the points you want to bring up in response are these three points right here; right?

A Yes, these were three general points, right.

Q And you believed these to be true and correct as of this time?

A Yes.

Q That both NYNEX and UIH have worked with you over the past six months in preparing the pay TV proposal, they've been active participants in all aspects of business planning, especially in the development and verification of your business plan assumptions; is that right?

A That's right.

Q All right. Now, let's go on to Exhibit 681, please. And I told you, I'm just going to lightly pass over these.

681. No?

A Oh, I think it's in here. Okay.

Q Got it?

A Got it. Right.

Q 681 is the same date--well, it's October 29, 1992, questions from broadcast authority presentation. And down at the bottom where it asks where Wharf and UIH would regard an investment in this venture. And I'm just going to read from the last sentence and ask if that accurately reflected your views at the time. "In the case of UIH, who is perhaps the largest investor in international cable television systems, they have, as entrepreneurs, scrutinized Wharf Cable's plan and have found it entirely viable." Do you see that?

A Yes.

Q And that goes to this verification issue that you have somebody, an outside source, a cable TV company, to verify your assumptions in your plan?

A That's correct.

Q Okay. And then if you'll look over, please, at Exhibit 1009 and that's going to be in the--in the white book.

A Oh, okay.

Q This is a February 2nd, 1993, letter from Lonnie Huange to Mr. Hooks of HBO and then a Mr. Douglas Lee of Fox International. You there?

A Yes.

Q "And as I mentioned previously, our strategic partner, United International Holdings, UIH, has been integral to the development of Wharf Cable's implementation plan. UIH's activities have involved both programming and network applications." True statements given to HBO and to Fox?

A I--I would question the word integral, but other than that, it's okay.

Q It's okay. You don't like the use of the word integral, but you notice we used it before in connection with your speech, you used the world integral as well, didn't you?

A That's true.

Q All right. Now, let's go on to Exhibit 1188.

A 1188.

Q You there?

A Yes.

Q Now, this is a speech given by you to the NCTA conference in San Francisco on June 6th, 1993; right?

A Yes.

Q And any time you gave speeches like this it had to be cleared by Mr. Ng or somebody else above you?

A It didn't have to be cleared, but it was generally referred to people above me, yes.

Q This one was, wasn't it?

A I believe it was, yes.

Q As was the last one that you gave to the broadcast authority on October 29th--

A Yes.

Q --1992?

A We had all reviewed that one.

Q All right. Now, this speech is Oct--is June, 1993. Now, Mr. Fries was in the audience at the time of that speech, was he not?

A I can't recall him being there.

Q There were UIH representatives there?

A There were.

Q All right. And I guess you were closing on an optimistic note and in my highlighted portion here, this is on page 8 of

your speech. This is June 1993. "Before closing on that optimistic note, I would just like to mention two further points that I believe will help create a foundation on which Wharf Cable can build success. Firstly, we are going into the market with two very strong and experienced strategic partners, neither of whom will need any extensive introduction in this audience; NYNEX Network Systems and UIH. NYNEX experience especially relevant to the dense urban environment of Hong Kong is perhaps closer in characteristics to that of New York than anywhere in the world." Do you see that?

A Yes.

Q And this is the speech that you gave to the NCT with the UIH representatives present; right?

A Correct.

Q Now, in August 1993, just a couple of months later, you were asked for your opinion of what you thought the role for UIH should be or whether there should be equity for UIH; remember that? Ownership.

A Asked by whom? Sorry.

Q You were asked by Mr. Ng to develop your thoughts as to whether UIH should be allowed to become an investor in the Wharf Cable project.

A Not whether they should be allowed to become an investor. I--I believe that the brief was please review, you know, UIH's contribution, the pros and cons thereof.

Q All right. Good. Look at Exhibit 1243, please.

A Right.

Q Now, Exhibit 1243 and then there's a follow-up Exhibit 1260 and you're familiar with the September 1st memo that follows this up?

A Yes.

Q And this reflects your views of UIH's contribution over the past year or so; correct?

A Correct.

Q And it was your view that, "UIH had been a valued technical partner throughout Wharf Cable's bidding and pre-launch activities. They have contributed significant network, financial and managerial input and have acted as Wharf's agent in securing and getting key personnel, e. g. David Keefe." You see that?

A Yes.

Q And that was an accurate reflection of your view at the time?

A Yes.

Q And then over on the next page, "Wharf Cable cannot under-weigh the entrepreneurial value of the sweat equity contributed by UIH in our nascent beginnings. We have a moral obligation to compensate UIH, if even just to avoid being branded corporately as being ungrateful." In your view UIH's contribution was--was significant; right?

A In my view, yes. I mean, what you just read out was--was more than my view in terms of the--how would I say?--the size of their contribution, it was really--

Q Well, I'm going to talk to you a little bit about your recommendation--

A Sure.

Q --so you don't have to worry about that.

A Okay.

Q I just want to talk about the contribution--go ahead, Mr. Munson.

MR. MUNSON: I'm sorry. I--I don't mean to interrupt, but I--I just wasn't sure if the witness had finished his last answer. Had you finished your answer?

THE WITNESS: Yeah, I think so.

MR. MUNSON: Okay.

Q (By Mr. Chase) Then I'll ask another question.

A Please.

Q Look, please, at Exhibit 1260. Now, Exhibit 12--do you have it there?

A Yes, I do.

Q Exhibit 1260 is your follow-up memo and let me see if this also accurately expressed your views. "In addressing considerations one and"--the second page. I'm sorry.

"In addressing considerations one and three, while UIH cannot be considered as a heavyweight in the development of new technologies and services, they're parallel development in

other international cable systems and their contacts within the dominant U.S. cable industry serve to provide Wharf Cable with a useful strategic role should we desire to utilize it. These links were particularly helpful at Wharf Cable's formative stages when we relied heavily on UIH to act as a catalyst and reference for our procurement of technical design resources, equipment and personnel. UIH's contribution was made in the spirit of entrepreneurial partnership and justifies a form of compensation commensurate with the expected upside of the Wharf Cable project." You see that?

A Yes, I do.

Q Accurately reflect your views at the time?

A I--I think in the context of this document, that this was--this was both, you know--how would I say it?

Q How would you say it?

A Well, just hang on a second. I mean, I think this--this section of it was not meant to be the summary, the summary paragraph. You have to read some of the other paragraphs as well.

Q With respect to your recommendation?

A That's right, with respect to the recommendation. But, for instance, you know, even on the first page, there's more in the way of recommendation as well.

Q Well, we're going to come back to this document. I'm going to talk to you about your recommendation, so don't--don't feel slighted that I'm not giving you an opportunity to do that.

A Okay.

Q We'll--we'll talk about that. I just wanted to make sure I got out your views of what you viewed to be UIH's contribution at this point in time when you're writing these things; okay?

A Okay.

Q Now, let me back up to another subject in another period of time and we're going to come back to that one in a few minutes; okay?

I want you to look at--well, not look at. I want to talk to you about--I want to talk to you about this issue of documenting the transaction, Shareholders Agreement and all of that. You remember testifying at length on those subjects; right?

A Okay.

Q Now, up to the time that NYNEX pulled out at the end of December 1992, you were anticipating a three way deal; right?

A Yes, up until the time that NYNEX expressed that they couldn't address these issues until station launch we were looking at a three--three way deal.

Q You know, instead of going back and forth on characterizing NYNEX, why don't I stop there for a second and ask you to look at Exhibit 1030. Why don't you do that and then we'll get this cleared up real fast.

Q All right. Are you there?

A I'm--

Q Not yet.

A Okay.

Q You there?

A Yeah.

Q Now, this is a memo from Mr. Fries to Mr. Booth, D'Ottavio, Hudon, Schneider and Alan Spangler and on the bottom under "Partnership Issues," it references a conversation that he had with you about this time; right? You see that?

A You mean under 2(a), NYNEX?

Q Yeah, under 2(a), NYNEX.

A Well, again, here he's saying Emil reconfirmed NYNEX withdrawal.

Q Yes.

A That's his--his language, not mine.

Q "Emil reconfirmed NYNEX's withdrawal from the cable project and clarified their prospective role in the telecom venture. NYNEX has signed a Technical Cooperation Agreement with Wharf Telecom which insures the provision of NYNEX personnel, technical expertise and other assistance. NYNEX will not make a decision on its equity investment in the telecom project until license award. Emil believes there is a very low probability that they will participate at this level." Do you see that?

A Yes.

Q Now, this memo to the people at UIH is an accurate reflection of what you UIH; is--of what you told Mr. Fries; right?

A I--I wouldn't say it's accurate in the sense that what we told them about NYNEX decision on its equity investment was not related strictly to the telecom project. It was related to the entire project combining both the telecom and the cable. So--

Q Look at--

A --there is an inaccuracy in here.

Q Look at page 608 of your deposition, please.

A Which volume is that in? Sorry.

Q That's going to be in volume two. Now, there I'm asking you about Deposition Exhibit 2517 and will you confirm for me that that's the same as this 1030? You can see the deposition tag on it. You follow me?

A Yes.

Q All right. And I asked you at the time of your deposition, "Look at Exhibit 2517 and let me ask you if you'll review that and tell me if that's an accurate reflection of a conversation you had with Mr. Fries that evening? Answer"--it goes down a little ways before we get to the answer. "I think they're accurate. Can you remember anything else that was discussed in that conversation with Mr. Fries? Answer: No."

Now, those were the answers you gave about this document at the time I asked you almost two years ago; right?

A That's correct. And--and on--on this reading, I mean, it's pretty obvious to me that there was a--you know, there was a discrepancy.

Q You mean now you find a discrepancy?

A Well, now that I read this paragraph again, yes.

Q Oh, so today there's a--do you have a vision?

A No, I don't think so.

Q Okay.

A Unless you are.

Q Okay. So today there's a discrepancy. All right.

Now, let me get back to this now. At the end of December, NYNEX, I'll use your language, withdraws from the cable project; okay?

A I--I don't believe I said that. That's somebody else's language.

Q So that's not accurate either from Mr. Fries' memo.

A Well, as I said, NYNEX chose to put partnership discussions on hold until station launch. We in turn, I think from the Wharf side, also did the same thing.

Q But that's not how you characterized it two years ago when I asked you the question, was it?

A Well, you--I--I don't know how I'm supposed to interpret. I'm telling you this is what I recall now and what I'm reading--

Q Let's--

A --from this paragraph.

Q Let's deal with today's recollection.

A Okay.

Q Today we'll deal with today's recollection. Okay. So NYNEX is going to put things on hold as to the cable project until the fall of '93; right?

A Correct.

Q All right.

A Station launch.

Q Now, at that time there had been draft Shareholder Agreements prepared with--for three parties to sign; right?

A Yes.

Q And NYNEX announcing its decision, rendered all of that beside the point; didn't it?

A Well, I'm not quite sure what you mean by rendering all of that's beside the point.

Q Well, the agreement wasn't signed because NYNEX did what it did; right?

A The agreement was--could not be signed because of what NYNEX did; correct.

Q And so as far as there being any deal points or issues holding up the deal, there weren't any. It was simply NYNEX didn't want to play?

A No, I wouldn't say that. I mean, in terms of what our position in terms of going forward with the deal and this has been consistent from, let's say genesis, that we would always want a three-party deal for the reason of corporate governance. This was an issue, as I think we explained before, stemming out from the Hong Kong cable, HKCC, scenario wherein Wharf was caught in a bind where it couldn't make a controlling decision. And--

Q Mister--go ahead.

A --if we were to proceed on a two-party basis, then that would be--in effect, have--you know, we would incur that problem once more.

Q All right. I didn't ask you that question yet. I mean, I know you want to talk about why you can't do a two-party deal. I'm not--

A Well, no, you asked me--sorry. You asked me what--what--you know, whether that had changed and I said--

Q No. Listen to my question.

A Okay.

Q You had the thing set up for three parties; right?

A Yes.

Q NYNEX chose not to play; right? Right?

A Correct.

Q And then you couldn't use that agreement; right?

A That particular agreement? That particular piece of paper? No--

Q Right.

A --we couldn't--we couldn't sign it at that point in time.

Q Okay. Now--

A Didn't mean that if NYNEX revisited the issue upon--upon our station launch and then they decided to come back in again that we couldn't use that same document.

Q Dust it right off, put it on the table and sign that puppy up; right?

A That's right.

Q Okay. That's all I'm trying to get at.

A Okay. Good.

Q So NYNEX leaves and--and then you end up with just you and UIH. Then there are two; right?

A Yes.

Q All right. Now, you testified on your direct examination about some notes that you say reflected conversations that you had or the meeting that you were a party to. Look at Exhibit 1002, please. That might be in the group of documents I left with you this morning.

A I have it here.

Q Okay. 1002 would be your notes undated where it says, other partners, et cetera, NYNEX not expected to come in, et cetera. Do you remember testifying about that?

A I do.

Q And you testified you think it took place in a meeting and Stephen Ng was there and UIH was there?

A Yes.

Q All right. Look at page 607 of your deposition, please.

A Okay.

Q Looking at 607, line 8 and I'm asking you about Exhibit 2517-A, which are those same notes; correct?

A Yes.

Q Okay. "Now, first let me ask you whether 2517-A references the conversation you had with Mr. Fries on or about February 9th, 1993." And then there's a little bit of stuff there. And then you say, "I have no idea." And then I say, "Looking at 2517-A; first, it is your handwriting; correct?

"Answer: It is.

"Do you recall having a conversation with someone from UIH where you would have been writing on an Isle of Shangrila pad?

"Answer: Yes.

"And when would that conversation have been?

"Answer: I can't recall.

"Question: From the context of the information contained on 2517-A, can you put an approximate time frame on the document?

"Answer: It would have come after the NYNEX pullout because it says NYNEX not expected to come in.

"Question: So it would have been some time after the 1st of January, 1993?

"Yes.

"Question: And can you say roughly how long after the 1st of January 1993?

"Answer: The only other context I can pull a day in here is that we started to talk about Star TV doing a deal with us for pay TV, but I can't remember when those discussions started either.

"Is it your general recollection that this would have been some time in the first half of 1993? Can you tell from the context?

"Answer: No, I honestly can't"--wait a minute. I lost it. "No, I honestly can't tell."

Then I go on, "Look at Exhibit 2517 and let me ask you if you'll review that and tell"--oh, that's the other document we just talked about.

Let me stay with these notes for a second. Look over at 609.

A Okay.

Q Line 13. We're back to the notes then. "Now, let me ask you to look at 2517-A.

"Uh-huh.

"Can you tell me anything at all about the context in which these notes were made, that is 2517-A?" And then you go on.

"Well, I believe you can't tell me when they were made?

"Answer: Correct.

"Except that they were made some time after January 1, 1993?

"Answer: Yes.

"Question: Can you tell me whether they were made in the course of a conversation?

"Answer: I think they were probably made in the course of a meeting.

"Can you tell me who was at the meeting?

"Answer: Some UIH representatives.

"Can you tell me whose comments are reflected in these notes?

"Answer: No, I can't."

Now, that's what you can remember about this thing back a couple years ago; right?

A That's correct. And--and on this pass, I've since seen other documents that have given me recollection of the context in which these notes were made.

Q So you're getting a better recollection as you're here in Denver; right?

A Well, I'm getting a better recollection as I'm going through the case, yes.

Q Denver seems to do that to people, Mr. Fung.

A Good. Must be the water or something.

Q Must be the water.

Now, let me--let me ask you to look, if you will, at Exhibit 1153.

A That's not in there either.

Q 1153 should be there. It should be in that group of documents I left for you this morning.

A Right. I'm sorry.

Q 1153 is an April 30, 1993, letter with an attached draft MOU.

A Okay.

Q Okay? You have that?

A Uh-huh.

Q Now, I believe the April 30, '93, letter has been referenced a lot in this case and it might even be in the jury book, but now this--this one has an attached draft with a memorandum of understanding; right? You see that?

A Yes.

Q You see Mr. Fries' handwriting all over it?

A Yes, I do.

Q Now, in fact, that handwriting reflects a conversation that you and Mr. Fries had with respect to the terms of that draft; right?

A Just give me a quick second to read it. It looks like it would reflect something that--yeah.

Q All right. And that's roughly April 30, 1993; right?

A Uh-huh.

Q So before when you testified that you didn't start getting drafts of the MOUs until June; that's just not right, is it?

A Did I say that, that I didn't get drafts?

Q Yeah, you did.

A Okay.

Q So you were getting them at lest this point in time; right.

A Yes, it appears so.

Q Now, look if you will, please, at Exhibit 1213. It's another draft MOU and it's one that we've looked at somewhat in this case, we've looked at earlier today.

A Yes.

Q This is the July 15, 1993 version, and this is the one that you delivered to Mr. Ng with your memo, right?

A Correct.

Q All right. Now, as of the time you delivered this to Mr. Ng, you, as the negotiator, had done all you could do on this particular document, right?

A All I could do, yes. I mean, let me explain. This all--it started off with this April 30th document, and then I think we've had some conversations both in Denver, as well as on the phone, and this was basically what I thought I could do with Mike Fries, and then I would present it up to Stephen and onwards up to the board.

Q That's what I understand your testimony to be, that--

A Right.

Q --this document reflects as far as you and Mike Fries could go, right?

A As far? I'm not quite sure what you mean "as far."

Q Well, you know, I think--I think you think I'm trying to trick you, and I'm not really.

A Well, I'm just trying to be--trying to understand where you're coming from.

Q You two guys are the negotiators out there in the world trying to put something together, right?

A Yes.

Q Okay. And both of you have to report to other people, right?

A Correct.

Q And as far as the two of you reaching a final point in your negotiations, you kind of reached it with this document, didn't you?

A I think yes.

Q Okay. That's all I wanted.

A All right.

Q And then you presented it up to Mr. Stephen Ng, right?

A Yes.

Q And you never heard back from Mr. Ng, did you?

A I'm not sure whether it was with respect to this particular document, but we did hear back, yes.

Q Well, you never talked to Mr. Ng about this particular memo or this draft MOU with the memo, did you?

A I can't recall right now.

Q All right. And then after that, you had another draft MOU, and I'll ask you to look at Exhibit 1305.

A Okay.

Q Exhibit 1305 is the November 5, 1993 letter from Mr. Schneider to Mr. Ng with a draft memorandum of understanding.

A Okay.

Q And this went to Mr. Ng, and it has a draft MOU with it. And up in the upper right in handwriting of Mr. Ng, I guess, it says, "Copy, Emil, views?"--and then something that we can't read. Do you see that?

A Yes.

Q Can you read that part that's under "views"?

A It looks like, "Please prepare a reply."

Q All right. And did--you never did prepare a reply to this document, did you?

A I can't recall.

Q And--

A I think there probably was something there.

Q Well, I guess if something exists, we'd have seen it by now. And let me ask you this question, Mr. Fung: You never did discuss this document with anybody, did you?

A That's not true.

Q Why don't you look at Page 717 of your deposition.

A Okay.

Q On Page 717--actually, it fairly begins on Page 716. Okay. I'll start on Page 716, Line 17, and I'll move down, and we're talking about this letter and draft MOU. "Did you believe it was acceptable from your point of view for Wharf to enter into that MOU?" And then you say, "I need to see it." And then you say, "Actually, I had--I had actually made some corrections to this MOU that were still outstanding issues."

Question, "Did you report any of those back to UIH?" Answer, "I don't recall."

"Did you report any of them to Mr. Ng?" Answer, "I don't recall."

Question, "Do you recall discussing them with anybody?" "I don't recall."

"Do you know if Mr. Ng ever reviewed the draft MOU with your corrections on it?" Answer, "I don't recall that."

Question, "Do you know if he ever talked to Mr. Woo or any members of the board about that draft MOU?" Answer, "I don't recall."

Now, those were the answers you gave to those questions about this MOU at that time, short of what Mr. Munson wants to add.

MR. MUNSON: Go ahead.

THE WITNESS: Sorry, I got disrupted. What was the question again?

Q (By Mr. Chase) Simply, those were your answers, right?

A Yes, those were my answers.

MR. CHASE: Now, Mr. Munson, your turn?

MR. MUNSON: Your Honor, maybe I'm missing something, but I thought the question that was asked of the witness was whether he ever discussed with anyone, and the answer in the deposition to those questions I don't think is inconsistent with what he said. So I don't think it's impeachment.

THE COURT: Bring it out on redirect.

MR. MUNSON: Thank you.

Q (By Mr. Chase) Mr. Fung, let me ask you to look over now at Exhibit 1174. And since the Judge has challenged me to making things go from my mouth to God's ears, I'm going to show him I can do that because I'm going to finish with you, and then you'll all believe in my supernatural powers.

Mr. Fung, Exhibit 1174, are you there?

A Yes, I am.

Q All right. Now, Exhibit 1174 is a document that you've seen for the first time in the course of this litigation, right?

A Yes, that's right.

Q This is Mr. Ng's report to the chairman in May 28, 1993, where he says, "Partnership discussions with UIH in suspension." Do you see that?

A Yes.

Q Now, he didn't tell you that, did he?

A Tell me that discussions were in suspension?

Q Right.

A Not in those exact words, no.

Q Well, as a matter of fact, throughout this period of time, this exact period of time, and this falls about a week before you gave your speech about UIH being your strategic partner, you were having partnership negotiations with UIH, weren't you?

A Let me put this in context here when you talk about negotiations. Where--go a step back and understand where we had been in terms of what we had told UIH to begin with, which was we would not address--based on the NYNEX, their decision, that Wharf Cable would not address partnership considerations or finalizing any partnership considerations until station launch.

What you saw in those April 30th and I think those other subsequent drafts of the MOU, remember the April 30th MOU was something that basically UIH sent to us, and I think really out of courtesy more than anything else, I was obliged to respond. Okay, and they kept saying--they kept putting dates, well, you know, can you respond by such and such a date? Can we get an agreement by such and such a date? And in each instance, you know, basically we said, look, guys, you know, I can talk to you about this stuff, but I can't make any sort of, you know, judgmental or even finalize any of this stuff until after station launch.

So I just want to clarify that, you know, when there was negotiations, I wasn't--I wasn't being proactive on these negotiations. I was being very courteous in responding to

suggestions. I mean, just because that things were sort of on freeze didn't mean that we couldn't talk, and if somebody had a bright idea, well, sure, let's go ahead and let's take a look. But that--in terms of negotiations, we would never really negotiate until after station launch.

Q So it's your testimony that at this point in time you were not in good faith negotiations with UIH regarding a memorandum of understanding?

A That's not true. I think you're misusing the word good faith. We were actually in excellent faith in terms of living up to, you know, sort of a very, very culprit courtesy position of saying, hey, guys, look, if you want to talk, that's okay, but I already told you, we're not going to actually consummate anything until after station launch.

So whether you call these good faith or not, you know, I believe we were actually in good faith discussions. But the fact is there was already something that was told to UIH, that I said, hey, guys, we're not going to go and talk about this until station launch, again predicated on what NYNEX said.

So if we're going to do a three-party deal together, okay, with NYNEX, UIH and ourselves, there's nothing to really talk about until the end--you know, until after station launch. In the meantime, if you would like to talk to us about anything else or if you indeed want to move forward and put some new initiatives on the table as was apparent in this MOU, I'd give you my thoughts, and I'd certainly push it up the chain if that's what you wanted. And that's exactly what happened.

Q Well, Mr. Fung, I'm not going to argue with you, and I'm not going to ask you to give that speech again because we've heard it, but some--for some reason, on May 28, 1992, and that's two days after you're advised that you've got the license,

Mr. Ng tells the chairman, "Partnership discussions with UIH in suspension," right? That's what he tells the chairman.

A That's what it says here.

Q He doesn't tell you?

A I don't recall him saying that, no.

Q And a week later you're standing at the NCPA convention for all the world to hear and see with UIH in attendance, and you're saying--let me remind you what you're saying a week later. "We are going into the market with two very strong and experienced strategic partners, neither of whom will need extensive introduction to this audience, NYNEX Network Systems and UIH." And that's what you're telling the world at the Ncpa, while Mr. Ng's telling the chairman, "Partnership discussions in suspension," right?

A I don't see the incongruence of that. I mean, it was still ultimately our plan to address the issues between NYNEX and UIH after station launch.

Q Let me ask you this, Mr. Fung: It's your testimony that from January 1 onward, you were telling UIH that, we can't really talk to you, you can send us proposals, but we're not going to do anything about it. That's your testimony in general, right?

A No, that's not true. We can't consummate anything on that basis. It doesn't--it didn't mean that we can't talk to you. I mean, that's exactly what we did. All of these MOU's that flew back and forth, you know, the April 30th one and so on and so forth, was actually our attempt to say, well, yeah, you've got some good ideas, let's go through them, and let's work through them. But what we've told you, you know, very, very

specifically is, even though after we work through them, they may, in our level, say acceptable, but we can't sign a shareholder's agreement until station launch.

Q And coincidentally, two days after you're advised that you've got the license, Mr. Ng advised Mr. Woo that "Partnership discussions with UIH in suspension," right?

A I think you asked that before.

Q Now, Mr. Fung, let's talk about a related subject. Look, if you will, please, at Exhibit 1273. 1273 is an internal document in Mr. Ng's handwriting, reflecting on a discussion that he had with the chairman the day before, and we've shown this many times, and I'm not even going to bother to get the blow-out up. "Didn't get"--it's to you. "Didn't get very far with the chairman. More interested in a telecom partner. How do we get out?" Do you see that?

A Yes, I do.

Q Now, you talked to Mr. Ng about this on September 16, 1993, didn't you?

A Yes, I--yes, I believe I did.

Q And in that conversation Mr. Ng told you that what Mr. Woo wanted was a global or a telecom partner instead of UIH, not in addition to UIH, right?

A No, I don't believe that that--that that was the case.

Q Look at Page 683 of your deposition. Are you at 683?

A Yes.

Q All right. I'm going to read you some of this. You know the drill. I'm sorry, 682, Line 4. I've got to put it in context for you. And I'm talking about this same little handwritten memo, right? We're talking about the same document at your deposition, right?

A I'm sorry, I'm trying to find out where it's mentioned.

Q All right. Right above, it says--

A Yeah, okay, I see it.

Q --"And you would have received it on or about September 16, 1993," right?

A Right.

Q And that's the one, "Emil didn't get very far with the chairman. More interested in telecom partner. How do we get out?"

And then I ask you, "Could you describe that discussion for me, please?" Answer, "The discussion referred to the fact that the documents that I had presented to him for submission to the chairman, after having reviewed those documents, the conclusion was that with respect to UIH, that he didn't buy off on a lot of pros."

Now, the documents we're talking about there are those two--two memos you wrote about UIH's contribution, right?

A I know about the one, the pros and cons. I'm sorry, the second one?

Q The August 11th and the September 1st documents that you submitted to Mr. Ng--

A Okay.

Q --that he submitted on to Mr. Woo.

A Okay.

Q And that's the ones that had your recommendation in it, right?

A That's correct, yes.

Q Let me go back to this. "The discussion referred to the fact that the documents that I had presented to him for submission to the chairman after having reviewed those documents, the conclusion was with respect to UIH, that they didn't buy off on a lot of pros."

Question, "Didn't buy off on a lot of pros you say?" Answer, "Yes, on a lot of the pros of the arguments we had presented, and the general view was we needed more global-oriented partners at the WCIL and Wharf Cable levels."

"Can you recall anything else about your discussion with Mr. Ng on this subject?" Answer, "No."

Question, "Was there discussion about the chairman wanting a telecom partner?" "Yes. When I refer to global, more global-oriented partners, I believe that Mr. Ng had drew a distinction between sort of, you know, partners of weight and political influence versus UIH, which was regarded as a lesser known entity globally.

Question, "So it's your understanding that he was looking for strategic partners instead of UIH, not in addition to UIH?" Answer, "I think that preference at that time was to look for partners who had more global capacity."

Question, "And so my question is, did you understand, based on Mr. Ng's report, that that was partners that will be instead of UIH?" Answer, "I honestly don't recall."

Question, "Did Mr. Ng express to you anything about Mr. Woo interested in continuing discussions with UIH?" Answer, "I don't think I heard anything to that effect, no."

"Did he express anything about discontinuing discussions with UIH?" Answer, "I interpreted the third line there, 'how do we get out,' as there was an indication of we wanted to discontinue our relationship."

Now, did I read that correctly about your answers to how do we get out when I asked you almost two years ago?

A Yes, I believe you read it correctly, and I think--you know, I think that there's a lot of contextual issues that arise out of that--

Q Well, I'll tell you what--

A --with specific reference to the relationship. I think what you're trying to highlight here is that--you know, that we want--Wharf wanted to discontinue the relationship with UIH. I think that's true, only to the extent about the discontinuation would apply to the fact that UIH was pushing a two-party agreement.

Okay, if there was a telecom partner involved, and this is what all the reference to the above in terms of, you know, global entities and so forth, had there been a telecom partner involved where we could get into a three-party relationship, then that wouldn't necessarily rule UIH out of the equation.

Q Mr. Fung, you keep saying UIH was pushing a two-party deal. Wasn't the draft technical--wasn't the draft memorandum of understanding that you had with UIH had expressly within it a provision for bringing in a third party?

A Yes, but that would be a two-party deal that would be signed between UIH and ourselves to being with, and then that expression of bringing a third party might come in afterward--after the two-party deal gets signed.

Q Right.

A Our position always had been that we would never sign a deal unless there were three parties and that if wanted to brought--bring in another fourth party, well, that would be fine.

Q Well, this is now, today, your interpretation of Mr. Woo's statement to Mr. Ng, or Mr. Ng's statement to you rather, "How do we get out?" Right?

A Well, I'm going to--it was all--I mean, I don't think that there's any contradiction between what I testified even two years ago.

Q Well, I think we'll let the jury be the judge of that, Mr. Fung. But look at the memo itself. Look at the memo itself, the four corners of the document. "Didn't get very far with chairman. More interested in a telecom partner. How do we get out?" That's all it says, right?

A Yes.

Q And then I just read a lengthy part of your deposition from two years ago where you're saying they want somebody instead of UIH, not in addition to UIH, right?

A I didn't say that.

Q Do you want me to read it again?

A If you wish, but I don't think I said that.

Q Well, I'll tell you what. I will. I will. Let's look at 682, 4, and I'm going to go through it again.

A All right.

Q You ready?

A Lay it on me.

Q "Could you describe that discussion for me, please?" "The discussion referred to the fact that the documents that I had presented to him for submission to the chairman, after having reviewed those documents, the conclusion was that with respect to UIH, that he didn't buy off on a lot of pros."

"Didn't buy off on a lot of pros you say?" Answer, "Yes, on a lot of the pros of the arguments we had presented, that the general view was we needed more global-oriented partners at the WCIL and Wharf Cable level."

Question, "Can you recall anything else about your discussions with Mr. Ng on this subject?" Answer, "No."

Question, "Was there discussion about the chairman wanting a telecom partner?" Answer, "Yes. When I referred to global, more global-oriented partners, I believe that Mr. Ng had drew a distinction between sort of, you know, partners of weight and political influence versus UIH, which was regarded as a lesser-known entity globally."

Question, "So it was your understanding that he was looking for strategic partners instead of UIH, not in addition to UIH?" Answer, "I think that the preferences at the time was to look for partners who had more global capacity."

"And so my question is, did you understand, based on Mr. Ng's report, that that was partners that will be instead of UIH?" Answer, "I honestly don't recall."

"Did Mr. Ng express to you anything about Mr. Woo being interested in continuing discussions with UIH?" Answer, "I don't think I heard anything to that effect, no."

Question, "Did he express anything about discontinuing discussions with UIH?" Answer, "I interpreted the third line there, 'how do we get out,' as there was indication of we wanted to discontinue our relationship."

Now, do you see that?

A I do.

Q All right. Now, Mr. Fung, the next thing that happens in this little sequence of events is a letter of September 27, 1993 from Mr. Schneider to Mr. Ng, and that's Exhibit 1276. Would you look at that, please? See that?

A Yes.

Q Now, this was also referred to you for advice, wasn't it?

A Correct.

Q Now, in that letter it says, "I understand from Emil that you have presented the deal to the Wharf board.

Understandably, I am quite anxious to hear from you on the outcome of those discussions." Do you see that?

A Yes.

Q Now, at this time, neither you nor anyone else from Wharf had told UIH what the chairman's decision was, did you?

A I don't believe so.

Q And what--

A Oh, hang on, hang on. No, we had expressed I think to UIH that the issue that, look, you know, the chairman wasn't favorably looking at this two--two-party issue.

Q Mr. Fung, you didn't tell UIH about what the chairman's reaction was until January, 1994, did you?

A No, wait a minute. We had always told UIH that there was a problem. Now, there was a problem with Peter Woo, specifically.

Q Okay. You and I aren't communicating. I'm talking about specifically Mr. Ng's discussion with Mr. Woo where Mr. Ng concludes, "How do get out." You didn't tell anybody at UIH that that had been the resolution of that meeting, did you?

A Until--wait, hang on. The last question was?

Q Until January, 1994.

A Well, no, even what I told people at January, 1994, did not refer to this how do we get out issue. What I told people in 1994, and I believe I told people at UIH even earlier than that,

was that Peter Woo really wasn't interested in having UIH along singularly with Wharf.

Q Mr. Fung, I'm not going to read your deposition testimony again. I'm going to ask you just plainly, prior to January, 1994, did you or anybody else at Wharf communicate to UIH the substance of what's contained on Exhibit 1273?

A Well, look, the substance of what is contained there is what I've already previously explained, which is the fact that Peter Woo did not want to go unilaterally along on a two-party transaction along with UIH. That's the substance of what's contained there. That was communicated to UIH in the sense that, hey, wait a minute, Peter's really an obstacle to this. You are throwing MOU's into our lap, and you're saying, please have people take a look at this. We have done so, and a two-party deal is not in the cards, guys.

Q You didn't tell anyone at UIH that Peter Woo was more interested in a more global-oriented partner, somebody with more weight, like you testified in your deposition, did you?

A Well, you know, I mean, it's--the question that was asked to us, and believe me, UIH kept asking about this, okay, was, hey, are we in? The answer to that question is, no, Peter has a problem with you guys going along unilaterally with UIH.

Now, whether, you know, had they asked a question, well, gee, are we in, and we are going to be replaced by a telecom partner, I would have volunteered that. But the fact of the matter is I don't think they did ask that question.

Q Why don't you look at Page 687 of your deposition?

A Okay.

Q Let me start at Line 13. Question, "Were you and Mr. Ng trying to hold on to some kind of relationship with UIH?" Answer, "I think we felt that there was still goodwill between the company that would benefit Wharf Cable in the future."

Question, "What was it at this time that you thought UIH could do that would benefit Wharf Cable?" Answer, "I think I had listed that out of the pros of my argument."

Question, "So at least you were of the view that getting out was a bad idea?" Answer, "I was of the view that to sever all relationships with UIH at that time was not a positive thing for us."

Question, "Was there some particular reason that that timing was important? Answer, "I believe that, yes, we were still in a sensitive start-up stage, and I had always looked to UIH to, if you will, from a distance, exert pressure and to provide direction in the event that our start-up activities had us going down a path which was not to the overall financial interest to the company."

"Did Mr. Ng appear to concur in that view?" Answer, "I believe he shared that view, yes."

Now, go on to Page 689--oh, wait a minute--689, Line 3. At anytime--this is talking about--actually, I better--I better stay down at the bottom of that page so we can put it in context.

"As of the time of receiving this Exhibit 2115, did you believe the possibility of UIH obtaining a 10 per cent equity interest in the Wharf Cable project would not be approved by the chairman?" Answer, "Not in the substantive form that that MOU had been drafted."

Question, "And did you tell anybody at UIH?" Answer, "I don't believe at that particular time of September 16th I had responded to UIH."

"Do you know if Mr. Ng told that to anybody at UIH?" "I do not believe so."

"At any time after September 16, 1993, up to mid-March, 1994, did you or Mr. Ng tell that to UIH?" "I believe that I started to give an impression to UIH in subsequent discussions that we were having difficulty and that the difficulty rested at Peter Woo's level."

Question, "When you say started to give the impression, that sounds a little bit vague. Did you tell UIH or any of its representatives that Mr. Woo or the WCIL board was simply not going to approve a UIH investment in the cable T.V. project?" Answer, "What I told the UIH representatives was that well in response to their questions regarding the MOU, I had told them that, look, this is now resting on not just the particulars of the MOU, but there is a large decision resting at Peter Woo's level and that for them to move forward in any further negotiations of the MOU, that they would need to--they would need to convince Mr. Woo regarding future prospects between UIH and Wharf."

"Do you recall when you communicated this to UIH?" "I recall several specific instances, but they're not--they're not in the full extent of the communication, but one was in January in front of"--"Please give me a year, please." "January, of 1994."

Do you see that?

A Yes.

Q And I come back to that question in different ways, and it's January of 1994 when you tell UIH that, right?

A Well, as I said, even in the testimony here, we had talked about this on several occasions. And moreover, what we had talked about was the fact that, you know, Mr. Peter Woo had a problem with the entire structure of that deal. And what the problem with that structure was relates back to this two-party issue. It was not an issue of we had to just, you know, boot UIH out of the door.

Q You know, Mr. Fung, you keep talking about this two-party issue. When I read you your transcript a few moments ago from what you talked about at the time of this, "how do we get out" memo, there wasn't a single word in there about a two-party issue coming up, was there?

A No, I don't believe there was, but, however, I mean, now--now that we've gone through this trial, and I think everybody's been educated going through the process of this trial, that was exactly the reference that was being made. And this is what I'm testifying to today. I can truthfully recall that.

Q Well, Mr. Fung, we're of the understanding that people do get sudden realizations when they have to face the jury at time of trial.

A Well, I don't believe it's sudden, Mr. Chase.

Q But let me--well, let me ask you to look over at Page 698 of your deposition, Line 12.

"Did you and Mr. Ng"--this is Line 12. "Did you and Mr. Ng discuss contacting UIH either by letter or by phone and just telling them exactly what just happened with chairman at that time?" Answer, "I don't recall."

"Did you"--

MR. MUNSON: Objection, Your Honor. There's not a question that was asked and answered.

THE COURT: Yes, there was. He gave an answer. He's responding. Overruled.

Q (By Mr. Chase) Question, "Did you ever consider"--well, let me start again. "Did you and Mr. Ng discuss contacting UIH either by letter or by phone and just telling them exactly what just happened with the chairman at that time?" Answer, "I don't recall."

Question, "Did you ever consider that as a possibility?" "No, frankly."

"Do you know whether in your conversations with Mr. Ng he indicated that he considered that as a possibility?" "I don't recall that he did."

Do you see that?

A Yes.

Q Okay. You didn't even consider picking up the phone and telling UIH what just happened with the chairman, did you?

A Well, but as I--as was in this testimony and what I just testified to now, we had discussions with UIH where we talked about the fact that Peter was not happy with the deal that they had put forward.

Q That's what you're saying today?

A That's what I also said in this testimony, too.

Q Well--

A You just read it.

Q --Mr. Fung, I suppose we're not going to keep doing this over and over again. Let me bring you to another subject here for a moment. Let's talk about the telecom partner. Let's talk about NYNEX, okay, or do you want me to read some more of your deposition?

A Well, I'm happy for you to read it because I think it re-enforces my point, but let's talk NYNEX.

Q Mr. Fung, after NYNEX pulled out in January, '93, December, '92--and you don't have to buy off on the word "pulled out." After NYNEX deferred whatever it was doing, Wharf had a number of potential telecom partners knocking at its door, didn't it?

A That's right.

Q And these would have included Ameritech?

A Yes.

Q British Telcom?

A Yes.

Q MCI?

A Probably less so.

Q Sprint?

A Less so again.

Q AT & T?

A Less so again. Those would be minor ones.

Q Okay. So the biggies were Ameritech, British Telecom? Those were the big ones?

A Correct.

Q And you also had NYNEX showing up in October or sometime even before then, knocking at your door, wanting back in the project, didn't you?

A I remember something to that effect, yes.

Q Well, look at Exhibit 1293, please. This is an October 26, 1993, memo from you to Mr. Ng.

A Yes.

Q And it relates to strategic partnership considerations, right?

A Correct.

Q And in there you talk about UIH and NYNEX as not being suitable for being strategic partners of Wharf, right?

A Well, in there what I talked about was different levels of suitability in terms of being strategic partners, and I--to outline the difference between a strategic partner and the tactical partner.

Q And you put NYNEX and UIH in the world of tactical partners rather than strategic partners for purpose of this memo?

A That's correct.

Q And you also observed in this memo that NYNEX was showing renewed interest in coming back into the project, right?

A I don't recall seeing that.

Q Look over on the third page of the memo.

A Which paragraph? Sorry.

Q Look at the second paragraph under Strategy for Existing Corporate Partners where it says--

A Okay.

Q --"The ongoing tactical relationship with NYNEX is, to be frank, minimal. Although NYNEX has since sought to renew a strategic relationship, they were solely responsible for calling an end to their strategic association." Do you see that?

A Yes, I do.

Q So at least as of the time you produced this memo, you knew that NYNEX was knocking back on the door, didn't you?

A Yes.

Q And when you did your recommendation with respect to who would be appropriate strategic partners, you got AT & T, you got News Corp, you got British Telecom, you got TCI, Bell Atlantic, Time Warner, U. S. West, TVN, no NYNEX, no UIH, right?

A Yes.

Q And this is--

A Because both for the reason that we had deemed them to be tactical partners.

Q Right. You did not deem them to be worthy of being strategic partners?

A Correct.

Q And strategic partners, as defined by you, just so we're all of the understanding as to what you're talking about here--let's see if we can find your definition here. Okay. It's down on the first page. "A strategic partner"--yeah. It's hard to read, so I'm going to have to read it. What else is new? "A strategic partner for WCIL is one who contributes his expertise in helping to determine corporate strategy, envision on a long-term basis, and would be a party from whom few confidences would be withheld. Such a party would likely possess a meaningful financial state in the operations and through board representation and/or secundment of personnel, be able to exert a fair degree of operation and strategic control." Do you see that?

A Yes.

Q That was your definition of a strategic partner?

A In contrast to a tactical partner, yes.

Q Yes, and by this memo you considered UIH and NYNEX to be potential or actual--actual tactical partners, right?

A That's correct, yes.

Q Let me talk to you about the March 18, 1994, meeting. Do you remember that meeting?

A This is the one--

Q This is one where--

A --in Hong Kong?

Q --we get down to the end of my time line here, the one that says "Wharf repudiates." Do you remember that?

A This is the meeting involving Mr. Elsner and Schneider?

Q Yeah.

A Okay.

Q Now, I take it you don't buy off on my statement "Wharf repudiates," do you?

A I wouldn't pass on for it, no.

Q No, you wouldn't--you wouldn't agree with me on that?

A No.

Q I guess if you did, we could all go home.

A I guess.

Q But let me talk to you about that particular meeting. Now, prior to that meeting, you met with Mr. Keefe, right?

A That's correct.

Q And Mr. Keefe was going to attend a dinner instead of you?

A Yes.

Q And you said you had other commitments that night, right?

A Correct.

Q The fact of the matter is you didn't want to attend the meeting or the dinner because you knew that the decision had already been made that UIH was not going to be able to invest, right?

A I don't think that was the fact of the matter, no.

Q You disagree with that?

A Well, I think you've got several things in there. One is, I couldn't attend the meeting. It wasn't I didn't want to attend the meeting. That's number one. And then two, I had no--well, unless I had ESP or--I had no idea how the--how the Wharf board was going to react to the proposal of UIH because I hadn't even heard UIH's proposal at that time.

Q Now, you're aware I take it that Mr. Keefe has testified that you told him that the thing was prearranged?

A Something in that general vein, yes.

Q Do you deny telling Mr. Keefe that?

A Yes, I do.

Q Okay. And you probably have heard that Mr. Keefe testified that you said Stephen had made promises to UIH and did not intend to honor those promises?

A I had heard that, yes.

Q That Mr. Keefe said that?

A That Mr. Keefe said that, yes.

Q Do you deny that?

A Yes, I do.

Q All right. And do you deny also Mr. Keefe's testimony that Stephen said he had no intention to let UIH invest, period?

A I don't recall hearing about that testimony, no.

Q And do you deny Mr. Keefe's testimony that one of the directors was supposed to be kind of the--kind of the spearhead to this meeting to make sure a UIH investment didn't happen?

A Again, I don't recall hearing that. I think you--in some testimony, that was brought up, but not in that specific context.

Q Well, let's find out what you remember about that. You went to the meeting the next day, right?

A Correct.

Q Now, you recall--tell me if I'm wrong. UIH gave a presentation that lasted about 20 minutes to a half hour, right?

A Yes, that's about right.

Q And then Wharf gave a--they dismissed UIH, and the Wharf members who were present at that meeting, the directors, gave it about 10 to 15 minutes after that, right?

A Yes, we hung around discussing the issues after that, yes.

Q For about 10 to 15 minutes?

A Roughly.

Q All right. And in that discussion, there wasn't anything about the fact that UIH couldn't invest because we need three parties, was there?

A I don't recall specifically.

Q Okay. So in addition to which--let me--so you don't recall anything about three partners being discussed as the reason why UIH couldn't--couldn't invest?

A Well, I think that wasn't--that wasn't the issue, you know, UIH closed on the table.

Q Well, the issue was UIH investing, right?

A Yes, UIH becoming a partner of Wharf Cable, yes.

Q Right. And whatever directors were at that meeting, and Mr. Woo decided, no, they can't, right?

A That's correct.

Q And Mr. Woo gave some reasons for--for his thinking, right?

A Correct.

Q And those reasons had nothing to do with the fact that it would be a two-party rather than a three-party arrangement, did it?

A I don't recall that specifically being mentioned, no.

Q Now, at the meeting, the directors who were there, other than say Mr. Ng and maybe Mr. Woo, really didn't have any intimate knowledge of what UIH had done for the implementation of the cable system, had they?

A If you mean intimate, had they met them before, I don't think they had.

Q Well, the directors got a one-page briefing memo that you prepared, right?

A Correct.

Q And for most of that, that's all they knew about UIH, right?

A I can't attest to whether they knew. I presume they actually knew more about UIH because we had had come up--you know, I mean, this was two years--close to two years after the initial time that UIH had come up. So there might have been conversations with the directors about UIH before that.

Q Okay. But the directors really didn't know what UIH had done in the implementation, did they?

A Again, I'm not quite sure. I mean, we--I represented on my document what I thought were the facts. If Stephen had communicated to them before, I wouldn't know about that.

Q And the directors didn't know anything about the true intent of the technical cooperation agreement, did they?

A Again, I'm not in a position to comment on that.

Q And the directors didn't know a thing about the MOU negotiations that you had been involved in, did they?

A Again, because I don't deal with these directors, I wouldn't know.

Q Well, I mean, at the time you're standing there, did they give any indication that they knew the true intent of the TCA?

A Well, I don't think we were dealing with those specifics at the time that we were there.

Q Okay. And you didn't fill them in on any of that?

A No, it wasn't my position to do that.

Q You didn't fill them in on anything with the MOU?

A No.

Q And, in fact, an MOU wasn't even discussed at this meeting, was it?

A An MOU, I don't believe so.

Q Okay. Now, as of the date of that meeting, you had your cable system all implemented and going, right?

A I think that's a little exaggeration. I mean, we had our cable system on its way, certainly not implemented and not going.

Q Looking back from the date of that meeting to September of 1992 when you submitted your bid, at that time you needed UIH for the technical aspects of your business, didn't you?

A Sorry, did you switch times, sir? What time?

Q I did switch times. I'm looking at September, 1992--

A Okay.

Q --going back to--

A At the time that we submit a bid?

Q At the time of the bid.

A Yes.

Q And you needed UIH for the technical aspects of the business at that time, right?

A That was our intent in having strategic partners, yes.

Q And you needed UIH for the implementation of this business, right?

A We needed--yes, as part of--it was one of the things that a strategic partner would provide.

Q And you needed UIH to convince the government that you had the ability to do this project, right?

A Yes.

Q And in March, 1994, you didn't need any of that from UIH, did you?

A Well, as I said in my previous documents, there was still a lot of needs that we still would appreciate UIH for. Specifically in my mind was this issue of shareholder conscience, which would be that there would be some guiding force sort of behind us that would sort of, you know, make sure that the checks and balances were there so that we wouldn't actually run away with the train, and that, as a function of a strategic partner, was very important.

Q So at least as far as you were concerned, you would have liked to have kept them around?

A Yes.

Q You were substantially out-voted?

A Well, if we could have reached a deal wherein all of the various conditions could be satisfied, then I think--then I think, you know, everybody would have gone for it, including, you know, a telecom partner in there, and, you know, all of these various governance and liquidity issues that we had talked about before.

Q Mr. Fung, would you like for me to read to you from your deposition what you said Mr. Woo said at this meeting as to why UIH couldn't come in?

A If you wish.

Q Well, will you trust me when I tell you it didn't have a thing to do with a telecom partner or conditions or anything like that? I tell you what, don't trust me. I'll read it to you.

A All right.

Q I wouldn't trust me either. I'm a lawyer.

Look at 790 of your deposition.

A I'm sorry, 790?

Q Right.

A Page 790. Okay.

Q I'm going to read to you from--starting at Line 25 on Page 790, and we're talking about after UIH left the meeting, okay? Do you see that?

A Um-hum.

Q And the question, "After UIH--after the UIH representatives left the meeting, you say that the group from Wharf stayed together for another 10 to 15 minutes, correct?" "Correct."

"Could you tell me, as best you can recall, what was discussed among that group at that time?" A, "It was primarily their reactions to the presentation that had been made."

Question, "As best you can recall, tell me who said what." Answer, "I believe Stephen led off that discussion and pointed out how UIH had assisted Wharf Cable and participated with Wharf Cable in our startup and prior to our startup. And the next recollection is, I believe Peter Woo then raised the issue of the compatibility between UIH and our management team. And as I told you earlier, that there was not--you know, he highlighted that there was not good relationships. And then Mr. Woo proceeded to discuss whether UIH would be of assistance to Wharf Communications or Wharf Cable in its future endeavors. And then other members of the board chimed in and basically came or made comments to the effect that they couldn't see UIH being active, strategic, or providing

strategic contribution, active strategic contribution for Wharf in the future. And based on those discussions, I believe Peter Woo then decided that we would relay to UIH the message that we could not be partners."

Question, "Okay. Have you exhausted your recollection of what was discussed in that meeting among the Wharf representatives." Answer, "Yes."

That was your description at that time, right?

A Yes.

Q Now, Mr. Woo finished the meeting by basically saying as to what to do about UIH. He said, "We'll pay them off," didn't he?

A I think I asked the question as to whether we should financially--sorry--financially compensate them, and he answered in the affirmative.

Q He said, "We'll pay them off," okay?

A He said that he--that we should work out a financial deal.

Q Well, actually, he said "We'll pay them off." Those were your words at your deposition, weren't they? You'll have to refresh me on that.

Q You're a glutton for this thing, aren't you?

A I love hearing my--

Q 799.

A I love hearing myself, just like you do, I guess.

Q Pardon me?

A Never mind.

Q Yeah, we're good at that, aren't we?

A Well, we're just visiting here.

Q Looking at the top of 799--well, I better start at the bottom of 798, since we love to hear ourselves, Mr. Fung. We make a great combination, but I'm still going to make my mouth to God's ears, okay?

Question, "Well, did anybody raise the issue of what consideration UIH expected in return for the pre-license and post-license application and post-license applications services it provided?" Answer, "Yes, I believe that was raised."

Question, "Who raised that subject?" Answer, "I can't recall."

Question, "What was the answer?" I believe the answer would--from Mr. Peter Woo was, "Will pay them off."

Question, "We'll pay them off?" Answer, "Yes."

Do you want me to read it again?

A Only if you want to go through the same thing.

Q Mr. Fung, I'm going to ask you on one more subject, and then I'm going to get out of your life.

A Okay.

Q I want to go back to the memos you wrote in August, '93, and September, '93, and the recommendations you were making at the time.

A Yes.

Q Remember that?

A Yes.

Q Okay. And also the recommendation that you made later on about having some kind of an investment bond for UIH.

A That's correct.

Q Remember that?

A Yes.

Q Now, before I do that, let me talk to you, first of all, about the business plan you guys had come up with at roughly this end of summer, 1993, and that would be contained within your financing memorandum, right?

A That's right.

Q Look, please, at Exhibit 1250.

A Okay.

Q Are you there?

A Yes.

Q Exhibit 1250 is the Wharf Cable financing memorandum, and unless your counsel wants me to as a fairness reading, I'm

not going to read any of this. It's a very thick document, but I'm simply going to ask you, with respect to the projections in that document, the projections of income, cost and capital expenditures, this was a very conservative worst case estimate, wasn't it?

A It was a case meant for banker's view. What is generally done in corporate finances, of course, that when you present numbers to potential bankers, you present a case that you believe can be achieved under very trying circumstances because you don't really want to run afoul of your bankers and have them come back and say, well, you know, you really didn't achieve what you've set out to achieve.

Q So you would say that these projections, since they're for bankers, are conservative projections?

A Yes, I think the word is conservative.

Q Worst case projections?

A Conservative I think would be a better word.

Q Okay. I'll live with that. I won't read to you any more from your deposition, unless you want me to?

A Not really.

Q Okay. We could take a vote on that.

Now, let me get to your recommendations, now that we've established your projection. Exhibit 1243, sir, is your August 11, 1993, memo.

A Okay.

Q August 11, 1993, from you to Mr. Ng, the pros and cons of the UIH investment, at the conclusion of which there's a recommendation. And I told you before we get the recommendation, right? Okay?

A Yes, okay.

Q Now, at the second page, you say, "The nature"--you talk about how UIH should be dealt with here. You say, "The nature of the compensation can take many forms, although it seems appropriate to enable UIH to benefit from a portion of the business up side." Do you see that?

A Yes.

Q And then you say, "Many of the negatives illustrated above can be alleviated providing that the equity deal is structured to render UIH as a very silent equity partner with our ability to buy them out should we find out they do not form a satisfactory ally financially or otherwise." Do you see that?

A Yes.

Q And then you conclude by saying, "Recommend structuring UIH investment as a blind financial play for UIH, coupled with potential of strategic benefits for Wharf Cable." Do you see that?

A Yes.

Q Now, a blind financial play is essentially having UIH as a passive director with maybe one member of the board of directors, right? I mean, passive investor with maybe one member on the board of directors, right?

A I'm not sure in this context that that's what I meant. In the financial vernacular that I'm used to using, a blind financial play really means that you have an investor. Much like if you invest in a stock of a company, you have now made a blind financial play because you really are--are not sitting there at that company.

So let's say you invest in U S. West, you are not sitting at the board of U.S. West. You are not privy to what U. S. West is actually doing unless you actually happen to read a paper or report about what U.S. West is doing, or somebody tells you about that. So that would be what blind is.

Now, financial--

Q All right.

A Sorry, did you want to continue?

Q No, you keep going. You're doing good.

A Okay. Financial is contrasting between the fact that you would do an operational transaction versus a financial transaction, so a financial transaction would be represented by something, you know, as a financial instrument.

Q Like a stock certificate?

A Like a stock certificate or a bond or something like that.

Q Or a bond. So a blind financial play, if I could try to sum it up easily, it's a 10 per cent ownership interest in the enterprise, and that's about it, right?

A That's correct.

Q Okay. And you never proposed that to UIH, did you?

A No, at this point in time, we were looking at alternatives that we would reconcile internally with our board before making that suggestion to UIH.

Q And if you do a blind financial play, there's no issue of super majority rights, is there?

A Correct.

Q There's no issue of veto power, is there?

A Correct.

Q There's no issue of a shareholder's agreement, is there?

A Well, there is still--there is still an issue of what outstanding security, i.e., what is the nature of the investment, how is it--how is it documented.

Q All right.

A So there is a security issue.

Q All right. Whether it's going to be a stock certificate or a bond or something like that, but a lot of these governance issues that you've talked about, they just go away, don't they?

A They do.

Q Now, in your September memo, 1260, you actually modify that recommendation to provide for a board seat for UIH. Do you see that on the bottom of the first page where you say, "The above having been said, it is important that UIH's contribution does not dominate over the views of our own

team. This we can ensure through structural separation wherein UIH's interaction is limited to the board level only, and it is expressly understood as a condition of investment for UIH that it maintains a strictly hands-off role with respect to operational issues." Do you see that?

A Yes, but I'm not sure that the board seat is mentioned here. The interaction with the board is we might have a committee of the board that would consult with UIH's issues.

Q All right. So it's still basically a 10 per cent blind financial play with maybe some- some kind of management interaction with UIH?

A That's correct.

Q Okay. And this was never proposed to UIH?

A As I said, all of these were internal--internal proposals that we wanted to clear before making the formal proposal to UIH.

Q And like the last thing I referred to, this wouldn't raise any issue of super majority rights, veto power, corporate governance, any of that stuff?

A Well, it still would from a standpoint of liquidity. I mean, it depends--dependent upon ultimately where we got down in terms of negotiations.

Q But you never made the proposal to them?

A Well, like I said, at this point in time--you're asking--you're asking me, you know, whether this particular proposal at this point in time would relate to any one of those issues. I'm saying that from a liquidity standpoint, that would still be an issue.

Q All right. But you don't know that it's one you couldn't have resolved?

A No, I don't know it's one I could resolve either.

Q Okay. Look at Exhibit 1293, please. This is your October 26, 1993 memo from you to Mr. Fung. You are Mr. Fung.

A I'm talking to myself again.

Q At least you came here that way. And it's from you to Mr. Ng, right?

A Yes.

Q All right. And this contains a recommendation as well.

A Yes, we saw this before, right.

Q And I'll have to start that one on the second to the last page. I'm going to read some more and then ask you about your recommendation.

"It would be difficult to argue that UIH did not incur at least opportunity costs in having assisted Wharf in the initiation of the cable project. However, as explained above, it is equally difficult to justify UIH as ranking in the league of strategic partners. As a compromise, therefore, and in recognize of UIH's contributions, we should discuss with UIH how we may be able to work out a tactical partnership arrangement which primarily involves the exchange of financial consideration. Such an arrangement was in fact contemplated in the technical assistance agreement, TCA, which was previously signed with UIH to lend credibility to our cable bid. Although the size of the financial consideration specified in the agreement may not be appropriate, given that UIH also contemplated being an

investor in the cable project itself, it can certainly be structured such that the agreement is modified to include a financial instrument incorporating a modest element of financial up side. This financial up side may be specified in a manner such that UIH also bears on an indirect basis the economic risk of the project, but would for all intensive purposes remain strictly as a financial investor." Do you see that?

A Yes.

Q That, too, would be a blind financial play, right?

A Yes.

Q And that, too, would not raise any of these issues with respect to super majority, corporate governance, veto powers, et cetera?

A That's right.

Q Because UIH would strictly be a passive investor?

A That's essentially right, until called upon.

Q And this proposal was never made to UIH?

A I have to repeat myself again. These were all things that we were considering internally before rendering a formal proposal to UIH.

Q Excuse me one minute.

All right. One more question, Mr. Fung, and then I'll turn you loose to the bad guys. Let me ask you to look at--do you remember the actual document you prepared, the investment participation right?

A I remember seeing it. You'll have to refresh me, I think.

Q I'm going to as soon as I find it.

Look, if you will, please, at Exhibit 1300. This is a follow-up to your October 26th memo?

A Yes.

Q And this is the UIH investment participation right that you proposed?

A Yes.

Q Mr. Fung, I have no further questions.

MR. CHASE: Thank you.

THE COURT: Redirect, please.

MR. MUNSON: Yes, sir.

MR. CHASE: And I should add that God's ears are smiling.

THE WITNESS: My ears, too.

MR. MUNSON: Is that a metaphor, Your Honor?

THE COURT: That's not even a metaphor.

REDIRECT EXAMINATION

BY MR. MUNSON:

Q Mr. Fung, I have just a couple of questions that I wanted to ask, and I've given you a couple documents there. You'll recall, I think, when you testified in your direct examination--and bear with me because I'm going to try to use this Elmo machine, and I'm not very practiced at it. But do you recall that you testified about Exhibit--let's see, I can't do it--about Exhibit 504? Do you have that there in front of you?

A Yes.

Q And Exhibit 504 was a document that you got from Mr. Leininger at Ernst & Young; is that right?

A That's correct.

APPENDIX DX

Excerpt from Defendants' Summation

April 1, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 8174:20-8177:16; Transcript 5955:20-5958:16)

Excerpt from Defendants' Summation
April 1, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 8174:20-8177:16; Transcript 5955:20-5958:16)

What we know first is that UIH needed Wharf far more than Wharf needed UIH. If you think about it for a minute, UIH's only way into Hong Kong as a cable T. V. company was through Wharf, and UIH's best way into China was through Hong Kong and Wharf. We know that Wharf needed NYNEX or some other telecommunications company for telecom. We know that everybody knew and shared a common goal from the beginning for a three-party telecommunications joint venture shareholder's agreement. Wharf had prior cable experience, but no telecommunications experience at all, and Wharf had capable consultants on the ground helping on the cable side of it from the very beginning.

The point is, again, UIH needed Wharf far more than Wharf needed UIH.

Second, Wharf never promised a right to invest. We've gone through this in some length, but there's no question that -- on the evidence that you've seen, that Wharf never promised a right to invest, neither an unconditional option nor a joint venture nor anything else. There was no promise that was ever made.

Third, Wharf didn't use UIH. What happened here in the real world is that UIH tried to work its way into this project. What do I mean by that? There's several phases and steps to this.

First what UIH did was to -- when they first arrived, they investigated the project to see if it was something that they wanted to do.

Second, they tried to work their way into the project in the fall of 1992 when their finances were lacking.

Third, they tried to work their way into the project when the third-party deal was put on hold. That's what this was all about. They're trying to work their way into the project. They also worked on this project to try to push the profitability, the internal rate of return projections on the cable T. V. project up so they could go out and raise money to make an investment. Now, there's nothing wrong with doing that, but that's what they did. They tried to -- they tried to work their way into the project. That's what this effort of theirs was about.

Fourth, Wharf didn't dump UIH. What happened was, Wharf offered to pay UIH at the end of the road. We have to remember that it was NYNEX that dumped Wharf. That's what happened. NYNEX said, "We can't decide," at the end of 1992. That changed the landscape. It's a different world thereafter. So if anybody got dumped, it was Wharf that got dumped by NYNEX.

Second, as I've talked about, gave serious and fair consideration to UIH's proposed two-party deal. But finally at the end of the road, when no committed telecommunications partner emerged, Wharf, as it was entitled to do, stayed with its four conditions that it had from the beginning to the end, that it had told UIH it had from the beginning to the end, and turned down a two-party proposal.

So in light of that, we get to the end of the road. How should UIH be compensated? What we know here by agreement is that the actual expenses of UIH were $900,000 for the period June, 1992, when they first showed up, until March, 1994. It's a little bit over a million for a broader period of time. What we're really talking about is that $900,000.

I ask this question: In light of everything we know, in light of everything that we've heard, should UIH be compensated at 50 times its actual expenses, what they're asking for under one theory here, $50 million? I say no. Should UIH be compensated at 70 times its actual expenses? Under another theory, they're asking for $70 million. We say no. What we say justice requires here is that UIH should be compensated -- it should be paid for its actual services and expenses, actual time and expenses that it put in. That's what Wharf offered, and that's what UIH refused and turned down.

Thank you. Have a nice -- have a nice holiday.

APPENDIX DY

Excerpt from Deposition Testimony of S. Norman

April 1, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 8128; Transcript 5909)

Excerpt from Deposition Testimony of S. Norman
April 1, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 8128; Transcript 5909)

Q That refers to Ed Ebenbach of Jerrold?

A It does.

Q Do you see that language? Skip down a little.

A I do.

Q Did you write that?

A I did."

MR. WILSON: All right. We're on cross-examination.

(Whereupon, the cross-designations of the deposition of Ms. Sonjia Norman were read by Mr. Wilson and Ms. Mickus.)

Q "Ms. Norman, let me ask you to look at Exhibit 512. Exhibit 512 is the August 24, 1992 memo from you to Mr. Fung. And in Paragraph 1--in Paragraph 1 you have four conditions suggested there. Do you see that?

A Yes.

Q Did Mr. Fung respond to you about Wharf's willingness to go along with those conditions?

A He did respond.

Q What was his response?

A I cannot tell you word-for-word, but he essentially said that there should be no conditions, and I think--well, I believe that came in writing because--but I don't recall the full details of it.

Q So he rejected any idea of conditions, correct?

A He did. That is what I say, yes.

Q Let me ask you, you said that you were in Wharf's

APPENDIX DZ

Excerpt from Deposition Testimony of S. Norman

April 1, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 8131-8132; Transcript 5912-5913)

Excerpt from Deposition Testimony of S. Norman

April 1, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 8131-8132; Transcript 5912-5913)

Q Prior to the time of Wharf submitting its application for the franchise, which would have been September 30, 1992, did you discuss with Wharf representatives who Wharf considered to be its competition for the franchise?

A Definitely. I certainly did.

Q Who did you discuss that subject with?

A You mean with Wharf?

Q Just with Wharf, right.

A With everyone. It was a constant topic of discussion with Emil, with Colin and Frank, and possibly Norris, with just about everyone. It was a common topic of discussion.

Q Can you describe generally what those discussions were?

A They were essentially--generally, they were discussions concerning whether or not they were going to be applicants for the cable T.V. franchise and what type of approach and strategy they would have. In addition to that, we needed to work out some sort of arrangements for them for the carriage of their existing satellite television channels.

Q Who did Wharf indicate they believed to be their competition for the franchise application?

A Hutchison.

Q Is that the full name?

A Hutchison Wam Po Limited, or one of its subsidiaries that they would have established for the purposes of applying for the cable T. V. license. In addition to that--you mean major or other? It was some discussion as to whether or not they would go into partnership with Time Warner and TCI?

Q They, meaning Hutchison?

A Hutchison.

Q Based upon conversations you had with Wharf personnel, did this appear to cause them concern?

A It was definitely a subject that came up often with all of our concern as to whether or not Hutchison would be successful as a competitor in the franchise application.

Q Let us mark this as Exhibit 529."

MR. WILSON: And I guess that's what I had on there before, sorry. And this is--sorry, this is Trial Exhibit 295.

Q "This is a document entitled "Subscription Document." Have you seen a copy of this before?

A Yes, I have.

Q Tell us what it is, please.

A It is the licensing framework for the subscription television franchise application.

Q Did you provide any services in connection with this document?

A I did make some suggestion--suggested amendments.

Q Can you generally describe the services you provided?

A Generally, I reviewed it and made some comments and suggestions to--I cannot really remember the details, but I

APPENDIX EA

Excerpt from Deposition Testimony of H. Van Demark

April 1, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 7939; Transcript 5720)

Excerpt from Deposition Testimony of H. Van Demark

April 1, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 7939; Transcript 5720)

HENRY VAN DEMARK, having been duly sworn, was examined and testified by deposition as follows:

Q "And good morning, sir. Would you please introduce yourself by giving us your full name and telling us where you live?

A Yes. My name is Henry Van Demark and I live in Bangkok, Thailand.

Q Mr. Van Demark, who do you work for?

A NYNEX Network Systems.

Q What do you presently do with NYNEX Network Systems?

A I'm in charge of regional business support group.

Q Can you tell us briefly what your job entails being in charge of regional business support group?

A Yes. I'm in charge of putting together a team that's going to provide various kinds of expertise in support of our business development efforts in the different countries of East Asia.

Q Can you tell me, please, what your post-high school educational background is and give me any dates of degrees or attendance at school?

A Okay. I went to Franklin and Marsha College 1962 to '66, majored in geology.

Q After you graduated from college, what did you do?

A I joined the Army from 1966 to 1970.

APPENDIX EB

Excerpt from Deposition Testimony of H. Van Demark

April 1, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 8026-8027; Transcript 5807-5808)

Excerpt from Deposition Testimony of H. Van Demark

April 1, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 8026-8027; Transcript 5807-5808)

hub and spokes going out with one spoke saying 'NYNEX' and the other spoke saying 'UIH'. Let me ask you if you think that that is a fair characterization and analogy to the negotiating relationship of the three parties?

A I think it is for the purpose of, for instance, Nynex talking with Wharf concerning our relationship and, I would assume, UIH talking to Wharf concerning theirs. There were some, as I said, tripartite negotiations concerning the letter of intent and Technical Cooperation Agreement in which we were all party to.

Q Okay. But, other than that, you had your discussions and they had their discussions, correct?

A That's correct.

Q Whatever deal UIH and Wharf might have been making outside of the context of the Technical Cooperation Agreement or the letter of intent or the shareholder's agreement, you would have no knowledge of that?

A That's correct.

Q Did you ever understand at that time or any time that NYNEX's rights or opportunities to invest in Wharf was dependent upon whether UIH would invest?

A No, that was not my understanding.

Q Did you ever have any understanding that UIH's right or opportunity to invest would be dependent upon NYNEX investing?

A No.

Q Were you ever told that NYNEX's right to invest would have to be approved by the Wharf board of directors?

A NYNEX's right to invest in Wharf?

Q In--right?

A In the joint venture?

Q Right?

A No, I don't think I was.

Q Now, from the time you arrived--and, when I say arrived, from late August 1992 until, let's say, January 1, 1993--UIH and NYNEX were, by and large, doing very different things with respect to the Wharf project; weren't they?

A That's correct.

Q UIH was focusing virtually all of its activity on the cable tv implementation.

A That's correct.

Q First the bid and then the implementation?

A That's correct.

Q And, you became familiar with Mr. Pittman while he was here?

A Correct.

Q And, did you understand him to be the chief operating officer of Wharf Cable at the time?

A Yes. I'm hesitating a little bit. I'm not sure that he was. He was more like a chief operating officer of the

APPENDIX EC

Excerpt from Direct Examination of R. Jones

April 7, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 8332-8340; Transcript 6113-6121)

Excerpt from Direct Examination of R. Jones

April 7, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 8332-8340; Transcript 6113-6121)

A Yes.

Q All right. Now, let me go on to a bit of a different subject, and it goes to a different opinion that you gave.

Did you give an opinion in this matter as to the impact of UIH's advice on the value of the Wharf Cable television project in certain aspects?

A Could you repeat that?

Q Yeah--no, I won't because it's a lousy question. I'll ask it better.

In addition to the opinion you gave with respect to valuation, did you give any opinions with respect to the value of UIH's advice as reflected in the financial planning for the company?

A Yes.

Q Okay. And did you give an opinion with respect to UIH's advice that Wharf rent rather than sell the decoders to the customers?

MR. MUNSON: Objection, Your Honor, leading.

THE COURT: Sustained.

Q (by Mr. Chase) Did you give--would you explain what opinions you gave with respect to the impact of UIH's advice?

A I looked at two things in particular. One was the effect of shifting from the situation where part of the decoders are rented and part are sold to individuals over to a situation in which all of the decoders are rented by the customers. And I looked at that situation and determined the financial impact of that.

Q Look, please, if you will, at Exhibit 1648.

THE CLERK: What was that number?

MR. CHASE: 1648.

Q (by Mr. Chase) Do you have 1648 in front of you?

A Yes.

Q And does that reflect your calculations of the impact of the 100 per cent rent rather than the sale of the decoder?

A Yes.

MR. CHASE: Move the admission of Exhibit 1648.

MR. MUNSON: Well, Your Honor, objection. Hearsay, and the other objection--

THE COURT: Overruled. The exhibit is admitted.

(Trial Exhibit 1648 was received in evidence.)

MR. CHASE: Okay. If we could distribute this to the jury as well?

Q (by Mr. Chase) Now, on this one, Mr. Jones, this has been distributed to the jury, and we have a board. And what I'm

going to do is ask you to explain generally what you did here and what you concluded on the basis of what you did.

A In Exhibit 1648, really the number of interest is the last number on the page. That's the bottom line.

Q Why don't I put that--that would be the second page of the exhibit. I'll put that one up on the board, then.

All right. Could you explain what you did here and how you reached the conclusion--what conclusion you reached and how you reached it?

A Okay. With the rental of decoders, there was a certain monthly rate that included that rent, and those situations in which decoders were bought, there was a different monthly rent, but the corollary to that is you get a lower monthly rent, but you have to buy the decoder. And so that's a decision that has to be made by the customer.

What I did was look at what the cash flow would be on the assumption that 50 per cent of the customers would rent decoders and 50 per cent would buy them and showed what the cash flow would be from those customers that rented, showed the cash flow from the 50 per cent that would buy, and then totaled that amount of cash flow for those two categories within the 50/50 buy/sell.

Then looked at the alternative on this last page of all of the customers renting their decoders and non-buying and determined what the present value of all that cash flow would be for that scenario.

So I took the present value of all the 50/50 cash flows, compared it to the present value of the 100 per cent rental cash flows, and the difference, or the advantage of doing the 100 per

cent rental was the last number there on the page converted to U.S. dollars of $23,000,937, or in effect about $24 million.

Q All right. Now, let me ask you to look at Exhibit 1649. What is 1649, please?

A 1649 is basically looking at the present value of the difference in decoder cost applied to the number of decoders that were purchased.

Q And is this a calculation that you did? When you figured the difference, what were you figuring the difference was?

A Basically, the approach was I noted how many decoders were acquired. That's from the financial projections. So the starting point is how many decoders are we dealing with? And then really the only factors after that are the fact that if the decoders are bought at $1,300 each Hong Kong compared to being purchased at $800 each Hong Kong, over 10 years what's the net present value of that difference? In other words, what advantage is it to buy them at $800 Hong Kong rather than $1,300?

A Okay. And is this part of the opinion you gave of the impact of UIH's advice?

Q Yes.

MR. CHASE: Okay. Now, I move the admission of Exhibit 1649.

MR. MUNSON: Your Honor, same objection to this exhibit as to the prior exhibit, on the grounds of hearsay and the item we discussed previously.

THE COURT: All right. The objection is overruled. The exhibit is admitted.

(Trial Exhibit 1649 was received in evidence.)

Q (by Mr. Chase) Okay. Why don't we do that--I don't even need to put that board up. That's--you've explained the calculation.

A As far as an opinion goes, I never named a number.

Q Well, let's do that. I'm getting to the end of my boards here.

This is 1649, and what is the number that you came out with in terms of the difference in decoder price?

A Well, you'll see the bottom number is 41,793,000. In other words, approximately $42 million.

Q And that would be the savings on the entire plan?

A On purchasing decoders--

Q Yeah.

A --at these--at $800 each.

Q Just that item?

A Yes.

Q Okay. Now, Mr. Jones, I'd like you to look at Exhibit 1300, and that is in the white witness books. It's also in the jury book as well. Are you at 1300?

A Yes.

Q Now, this is a memo from Mr. Fung to Mr. Ng of November 1, 1993, called "UIH Investment Participation Right." Have you--have you seen this before?

A Yes.

Q Did you perform a calculation on the basis of this memo?

A Yes.

Q Look, please, at Exhibit 1651. Could you tell me what Exhibit 1651, please?

A What it is?

Q What it is, yeah.

A 1651 is my calculation of Mr. Fung's information and his assumptions.

MR. CHASE: Move the admission of 1651, Your Honor.

MR. MUNSON: Objection, Your Honor. Hearsay. There's no foundation for this document.

THE COURT: Objection's overruled. The exhibit's admitted.

(Trial Exhibit 1651 was received in evidence.)

Q (by Mr. Chase) Okay. 1651 is your valuation of this investment appreciation, or investment participation right; is that correct?

A Yes, it's a demonstration of what Mr. Fung says in his memo, and then it follows some assumptions that he was contemplating as well in the memo.

Q Can you tell--I'm sorry. Can you tell us what concluded and the basis of your conclusions? And you can come up to the board if you think it would help.

A I don't need to.

Q Okay. You've had it with us, huh?

A I can explain it probably just as well. If you want a more detailed explanation--

Q Why don't you do--why don't you do it your way?

A Okay.

Q No, do it your way.

A All right. The top part of the memo, about the first five or six lines, comes down to the computation that shows--where it says, "Actual WCIL cash flows," and it shows the return there of--or the percentage of 30.29. That's basically a replication of the third page of Exhibit 1300.

Q Mr. Fung's memo?

A Yes.

Q Okay. And so what--if you could just generally tell us what conclusions or what value you placed on this investment participation right.

A Basically, after doing the computation and reflecting the assumptions that Mr. Fung had in the memo, my conclusion was that the range of the value of that investment participation right was about 14 to 22 million dollars.

Q Depending on the various discount rates that you use there?

A Yes. I use two different discount rates, and that's- -that's what makes the difference. I use the same--same projections of cash flow, the same terminal value. All of the numbers there in the bottom half are the same except for the discount rate, and that makes the difference between the 14 and the 22 million.

Q Now, why would these numbers be so different than say the 10 per cent interest that you were valuing?

A Well, they're only over seven years because the top part recognizes the cash flow and then a terminal in the seventh year. And as we indicated in those graphs earlier, it takes awhile for a cable company to overcome the early year losses and kind of hit its stride, so to speak. And if you remember, I said--I showed the part after it breaks even and said, this is where the operator makes his money. Well, basically, that's true. And you remember the line was going up.

And so after the seventh year, or during the sum period, six, seven years, whatever, the cable system is really hitting its stride, and if you ran this out to 10 years, I wouldn't be surprised if the value would be up in the range that we were talking about earlier.

Q Okay. Now, explain one other thing, the difference in the values at the top of the memo, which says 16 to 17 million, and the bottom of the memo, 14 to 21 million. Do you see that?

A Yes.

Q Explain--explain those differences, please.

A The 16 to 17?

Q Yeah, explain the difference between the top of--the top of your--the top of your analysis versus the bottom of your analysis.

A Well, the 16 to 17 is basically--there's one alternative, was that for the investment of 300 million Hong Kong, that UIH could receive a compounded 8 per cent return on that, or they could receive the greater of that or the computation that's shows at the bottom, which basically gives them the opportunity to share in a much larger amount by sharing in the percentage of the terminal value.

And so basically the cash flow--or the cash that's generated from the terminal value, if it's in excess of a certain amount, UIH was to receive 10 per cent of that. And if that whole calculation ended up being a larger number than an 8 per cent compounded amount, then they would receive that, or they could at least receive an 8 per cent compounded return.

Q So they get the larger of these two ranges here?

A That's what the memo says.

Q All right. So it's the larger of 16 to 17 million or 14 to 21 million, whichever works out larger?

A Right.

APPENDIX ED

Excerpt from Direct Examination of R. Jones

April 7, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 8232:12-8232:25; Transcript 6013:12-6013:25)

Excerpt from Direct Examination of R. Jones

April 7, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 8232:12-8232:25; Transcript 6013:12-6013:25)

MR. CHASE: Your Honor, at this time, we will offer Mr. Jones as an expert in cable television, an expert in appraisal of cable television, and an expert in appraisal of cable television in Hong Kong.

MR. MUNSON: No objection.

THE COURT: All right, go ahead.

Q (by Mr. Chase) All right, now you're an expert.

A Thank you.

Q Before I ask you about the specific opinions that you've given in this case, you're going to have to educate us a little bit, and we're going to have to ask you to teach us generally how you value a cable television system. Okay? And for purpose of this, I'm going to start you on a visual. If you could look at Exhibit 1613?

APPENDIX EE

Excerpt from Direct Examination of R. Jones

April 7, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 8287:07-8294:06; Transcript 6068:07-6075:06)

Excerpt from Direct Examination of R. Jones

April 7, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 8287:07-8294:06; Transcript 6068:07-6075:06)

Q Okay. Now, I'm going to send you back to the chair before I call you back here again. You've got seven laps; you've got 10 to go. Now, Mr. Jones, I want to question you specifically about the valuation you did first as of March 1994. Do you remember expressing an opinion about that that that was a $67 million value to UIH?

A Yes.

Q Now look, if you will, please, at Exhibit 1621. Actually, I'd like you to look at a group of exhibits because they're going to all be dealt with as a group. Look at 1621, 1644, 1643, and 1642. And, don't ask me why they're numbered that way because they are a part of a group.

MR. MUNSON: I'm sorry, what are the numbers again?

MR. CHASE: 1621, 44, 43, 42.

Q (by Mr. Chase) Do you see those pages, Mr. Jones?

A Yes.

Q Do you recognize those as pages from the report you gave in this case?

A Yes.

Q And, as a group, what do they show?

A They show the value of the lost profits to UIH in March 1994.

MR. CHASE: Move the admission of Exhibits 1621, 44, 43, and 42.

MR. MUNSON: Your Honor, I object to these being admitted into evidence. Do you have copies there in front of you of these, Your Honor?

THE COURT: No.

MR. CHASE: I think they're in the group--yes, I believe they are, Your Honor. They're in--

THE COURT: In the group you gave me this morning?

MR. CHASE: They're in the group that we gave this morning, yes.

THE COURT: All right. Okay. Now, I do.

MR. MUNSON: Your Honor, two problems with these. One is that they are hearsay. They're from the expert's report. An expert report is hearsay; normally, not admissible into evidence because they are hearsay. I'm just saying he can testify about what he did, but the actual writing of the report is hearsay. So, that's objection number one. Objection number two, we spoke this morning about an issue that we raised before the jury was here, and if you'll look at the top of the first document in the list, 1621, the first line in the middle, and then the fourth document, 1642, the same issue; they both suffer from the same infirmity that, I think, we addressed this morning.

THE COURT: The objections are overruled. The exhibits are admitted.

(Trial Exhibits 1621, 1642, 1643, and 1644 were received in evidence.)

Q (by Mr. Chase) Mr. Jones, I'm going to start with Exhibit 1621--oh, that's right, we are going to publish these to the jury and give them copies. So, Ms. Hutchinson will do that. Why don't you, in the meantime, come on back? Now, what I would like to do just as a little preface here is be able to show the jury how you did what you did and how you came up with what you came up with, but I don't want to go through every line item of these documents and I don't want you to have to repeat in detail everything you did. But, I think we should start at Exhibit 1621, and if you could explain what that is, and then we'll move to how you get to 1621. Do you follow me there?

A Yes.

Q Okay. Please, tell us generally what 1621 is, what it shows, and then we're going to look at the other exhibits to see how you get to 1621.

A This exhibit, I used three valuation approaches. This one up here indicating that the approach is based on the funding surplus or requirement, in other words investment, and the residual value.

Q That's that multiplier that you were talking about?

A Yes.

Q And, the funding surplus is what?

A The funding surplus is basically the requirements for investment. In other words, after taking into consideration again all the revenues, expenses, capital expenditures, what do you need then to build and operate this system? When it's a negative, that means you have to invest. When it's positive, you're making money. And so, this amount, this funding surplus or requirement, is computed for each of the 10 years. And so, over the 10 year period, we look at what is required for investment purposes. Or, on the other hand, what do we have in excess of that? And then, we look in the 10th year and apply the 10 multiple times the operating income. So, those are the two elements of this method.

Q All right. Now, let me ask you because under this method you show three different discount rates, and it comes up with three gross valuations in Hong Kong dollars. Do you see that?

A Yes.

Q All right. First of all, these valuations are in--this would be 5,508,000,000; is that right?

A Right. This is in Hong Kong dollars, this column. Then, it's converted to U.S. dollars. That's all that's happening in between here. We're just converting it to U.S. dollars by dividing it by 7.74, the exchange rate. Then, after determining that the value is this column--or, in this case, $712,000,000--UIH's 10 per cent share of that is 10 per cent of 712, meaning $71,000,000.

Q And, you have different numbers depending on what discount rate applied. Would you explain generally how that works? It looks like it gets lower as the discount rate gets higher.

A Right. These numbers right here change only because the discount rate changes. I didn't change anything in the projection. In other words, after determining what the projected operating income was, I didn't change anything in that. The capital expenditures, didn't change anything in that. Once we go through all of that and determine that those are reasonable, then we're down to discounting it to the present time and determining what the value is. So, it's due solely to these three discounts and you can see that as the discount rate gets larger, the value gets smaller. It's an inverse relationship. Whenever we discount it by again a larger discount rate, we'll get a smaller number because we're charging it basically with a heavier discount amount. So, using the same funding surplus and requirement and residual value in each of these three methods, I came up with the three different gross values in Hong Kong dollars, convert to U.S., apply 10 per cent.

Q And then, you averaged at the bottom at $65,000,000 on that particular method?

A Right. Out of--

MR. MUNSON: Objection, Your Honor; leading.

THE COURT: Sustained.

MR. CHASE: Okay.

Q (by Mr. Chase) What's the 65,000,000?

A Out of all these numbers, basically it does come down to the 65 for this method. In other words, if you take 71, 65, and 60, divide by 3, it's 65.

Q All right. Now, briefly explain the other two methods that are shown on that page and then we're going to back up a little bit and see how we get here.

A Okay. It's the same general methodology. In other words, the 10 year projection, and then discounting to the present time. However, we're using a different income stream. If you'll notice the second method is based on the change in cash. In other words, after determining this funding surplus and requirement, then going through the process of incurring debt, putting equity in, repaying the debt, and coming down to a net net cash--in other words, as we said before, the bottom line; in other words, that's the cash in your pocket--then, we add to that still the residual value because over the 10 year operation, we'll generate either a cash deficit or a cash gain each year after paying off debt and everything else. At the end of the day, we'll have the ending cash. And so, we have that on an annual basis and it's that stream of annual cash changes plus the residual that we discount back to the present time.

Now, we use slightly different discount rates here because we're discounting equity rather than equity and debt. In other words, overall investment. So, it's a slightly different discount rate, but we go through the same process generating Hong Kong dollars, convert to U.S., apply at 10 per cent.

Q Okay. And, please, explain briefly the third method that you've used?

A Well, before we lose this one--

Q Sure?

A The 62 is again the average of the three approaches.

Now, the third method is similar to the second where we're looking at ending cash, but the ending cash includes the investment. And so, we're looking at a 10 year residual value--in other words, operating income in the last year times 10--and then the cumulative cash that we have in the bank on the last day. And, we again apply our discount rates to that, come up with our Hong Kong dollars, convert to U.S., and take 10 per cent for UIH. The average of those three is 74.

Q What happens when you average the three methods? What do you come up with?

A Well, then we take the 65, the 62, and the 74, add them together, divide by 3, and we have 67.

Q That's where your 67 is?

A Right.

APPENDIX EF

Excerpt from Direct Examination of R. Jones

April 7, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 8273:16-8276:03; Transcript 6054:16-6057:03)

Excerpt from Direct Examination of R. Jones
April 7, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 8273:16-8276:03; Transcript 6054:16-6057:03)

Q Now, after you have gone through and evaluated the business plan, what do you do next generally in an evaluation and then we're going to walk you through specifically how you reached the numbers in this case, just so you know where we're going. But what do you do after you've looked at the business plan, such as we just did, what do you do next to determine value of a cable TV system?

A You mean after having gone back and evaluating all of the elements and the assumptions and the line items?

Q After evaluating all the--

A Oh, okay.

Q --things in the projections; correct.

A Okay. Because basically we go back to the beginning. We start at the beginning and we review all of the line items all the way through. Having done that and establishing the reasonableness of the assumptions and the projected revenues, expenses, capital expenditures and considering the--the risk associated with those, we then look at what a terminal or a residual value or a company value would be in the last year of the projection.

Q You better explain that, please.

A In the last year of the projection, the system is still in place and doing fine and it's worth a lot of money. However, you don't necessarily do another ten year projection to try to

recognize what that--that value is. It's not like an asset that you buy in the first year, you use for ten years, then you toss it aside and junk it.

Actually, with a business, after a certain period of time, in this case we're using ten years, the business has an increasing value. And so the owners of the business are sitting there with a very valuable asset in the last year. So just to recognize the profit that's been achieved in each year during that ten year period is--is not a fair recognition of the value of the entity or the thing that--that they own.

So in that last year, we determine the value of the--of the property. And we do that by looking at the operating income in that last year and applying a valuation multiple. In other words, going back to our favorite word, the EBITDA, we take the operating income and apply a multiple to that. That's another way of saying we multiple it, by a number and that represents the--the value of the property in that tenth year.

So we have a combination of things that we're looking at as far as the value of the company. What it's earning or investing each year during the ten years and then at that tenth year what that value is.

Q Okay. Now, we're going to come back and talk in a little more detail when we do the specific valuation of this property, but then what do you do after you've now applied your--now, first of all, let me ask you.

How do you figure out what multiplier to use?

A We use what's used in the industry, both domestically and internationally. Basically looking at the results of many, many, many transactions and looking at the pluses and minuses of why the multiple is at the high end of a range or the low end of

a range. Then taking that information and applying it to the particular company that we are looking at, you know, does it have a lot of growth and potential remaining? Is it pretty well tapped out and requires significant additional investment? We look at all the pluses and minuses with the system in the tenth year or the last year of the--the projection period.

APPENDIX EG

Excerpt from Direct Examination of R. Jones

April 7, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 8187-8328; Transcript 5968-6109)

Excerpt from Direct Examination of R. Jones
April 7, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 8187-8328; Transcript 5968-6109)

but we'll get to them.

In addition, I'm probably going to have you wandering about the courtroom because we've got some blow-ups that I would want you to talk about at the blow-up, so don't get too comfortable where you are at the moment.

Mr. Jones, why don't you tell us who you are and what you do?

A Again, my name, Robert M. Jones. I'm a principal and the president of the financial consulting group of The Strategists Group, Incorporated. It was formerly Malarkey Taylor Associates, same company, different name, in Washington, D.C.

Q We're going to ask you some questions about the nature of that group and what it does. But first tell me what is your title and your general responsibilities for that group.

A Again, I'm the president of the financial consulting group. We do a range of activities involved in the appraisal of telecommunications properties, due diligence reviews or operation and management and financial reviews of companies, feasibility studies, different kinds of financial modelling, again, operational reviews, and litigation support, as indicated here.

I supervise all of those projects. I have various people working for me on them, but I'm aware and involved in all of them. Some of them I personally perform myself.

Q All right. How many years have you been with The Strategists Group or its previous name, Malarkey Taylor?

A Since 1972, so that's 25 years.

Q And what positions have you held with The Strategists Group?

A The first position was financial analyst, and then that gravitated to senior financial analyst, then a vice-president, an executive vice-president, then a president of the company. Then we merged with another company and in the reorganization, I'm still a principal, but am the president of the financial consulting group.

Q All right. Now, let me focus back again on The Strategists Group, what it is and what it do s. First of all, what's its business in the telecommunications industry?

A We deal in a range of activities involving wired and wireless properties, wired being cable, and some telephone, the wireless being cellular, paging, various other types of wireless services. The company provides market research activities, consumer research activities, the financial services that I described earlier, engineering services, and strategic planning for companies.

Q Now, is this--do you have any business outside the telecommunications industry, or is it all in the telecommunications industry?

A It's all in the telecommunications industry.

Q And does that include cable television?

A Yes.

Q And how many years has The Strategists Group or its previous name, Malarkey Taylor, been around?

A Since 1964, so 33 years.

Q And that time, it's always been in the telecommunications industry?

A Yes.

Q Including cable television?

A Particularly cable television.

Q Why do you say particularly?

A That was the primary business of the firm from the beginning. Then in the mid Eighties, we merged with a wireless consulting firm, and did more of the wireless activities. So for the first 20 years, it was almost solely cable television.

Q Is there still a great deal of cable television?

A Yes.

Q With the business?

A Oh, yes.

Q And do you do much work in cable television?

A Yes.

Q And for how long have you been working in cable television?

A Since the beginning of my involvement with Malarkey Taylor in 1972.

Q All right, we're going to go into that in some specifics, but I want to get a little bit more out about The Strategists Group. How many offices does it have?

A Three.

Q Where are they?

A Washington, D. C. is the headquarters and the primary office. We also have an office in London and one in Singapore.

Q You're in the Washington, D. C. office?

A Yes.

Q How many employees totally does the company have?

A About 50, 45 to 50.

Q And is it spread evenly throughout the various offices or mostly in--

A No, the bulk of them are in Washington, D. C., and then we have four--five in London and four in Singapore.

Q What--does your company put out any kind of publications of any sort?

A Yes.

Q What are those?

A Two types. One is a quarterly newsletter that we publish and distribute to clients and other interested people that are on our mailing list. The other publications are large intensive research projects that we do, and we publish those and sell them to the general public.

Q Have you ever done any publications on cable television?

A Yes.

Q What kind?

A Well, one is a proprietary one, which by now is available for public distribution. We've checked with the client on that. It was basically a publication on how to value cable television systems, in which we looked at the different sizes and types of cable systems, explained the methodologies, explained the general financial characteristics of these different categories of cable systems, and then demonstrated through various scenarios what reasonable values would be. As far as public--

Q Let me just stop you there before you go to public. When did you do this publication on cable television valuation?

A About five or six years ago.

Q And you had a specific client at the time?

A Yes.

Q Okay. I'm not going to ask you who the client was that you did it for. What was your role in connection with that publication?

A I was the primary author of it.

Q Okay. Now, go ahead, you were about to talk about other public publications.

A Well, other publications are, having to do with cable television, are more specific in certain geographical or technology areas. Several years ago, we did a publication on a PCS, a personal communication services over cable, and PCS is a wireless service and the intent is to utilize cable television networks as a complimentary provider. And I contributed to that in terms of some cost benefit analyses, capital cost analyses, things like that.

The last year, we put out a cellular and paging benchmark study in which we demonstrated what the financial benchmarks were for cellular and paging. We're in the midst of working on a cable television benchmark study that should be coming out this summer.

Q What kind of things would go into a cable television benchmark study?

A The analysis of all of the financial components, the revenues, expenses and capital expenditures, and then the resulting balance sheet items from the financing part. We get public information from the annual financial statements, the annual reports and--

Q This is of various cable companies?

A Publicly traded cable companies.

Q Okay.

A And we compare--we do various comparisons of things like revenues per subscriber, revenues per home passed, and changes from year to year, things like that, then determine

relationships between revenue and expense items and perhaps balance sheet items, things like that, and compare those by company from year to year. Then in the presentation, it compares to the overall. So the cable one has not come out yet, but the cellular one came out last year.

Q What responsibility do you have with respect to the cable publication?

A Organizing it and seeing that it gets done. But also being the main contributor of determining what those benchmark items should be and how they're calculated, not necessary together and assembling all of the numbers, but to determine what we want to do and how it's calculated.

Q All right. And are there any other publications your company does in the area of cable? I'm not going to ask telecommunications generally, but just focus on cable.

A Yes.

Q And what would that be?

A The market research group in particular, consumer research group, has several publications out entitled Cable and Satellite Latin America, Cable and Satellite Asia, in which they basically do a whole survey of all of the providers of cable and satellite services in those regions, and provide information about them, and then provide projections of their expectation of subscribers and revenues.

There are other more specific cable publications. Another one, again done by the market research group, is called Branding and Bundling.

Q This is your market research group?

A Of The Strategists Group.

Q Okay, go ahead. Branding and Bundling; I like that. Is that rodeo?

A No. It could be, but this is more of a--to answer a real question in the general telecommunications industry about what the general public thinks and wants in branding and bundling of services. In other words, right now, generally we think in terms of telephone as being bundled without local and our long distance service. Well, as more cable companies get into telephone, then you might very well have your cable, long distance and your local telephone service bundled together. As we get into internet services, then that might be bundled. And what do consumers want or expect in terms of bundling, say an internet service with your local telephone, or should it be with cable, and what's the favorable response? It's all a part of, you know, an ultimate business plan and a marketing plan. So it was a detailed survey, conjoined study, interviews, quite a detailed study.

Q Any other publications, still talking about just The Strategists Group, in the area of cable television that aren't client specific? You don't have to tell me what you do for specific clients.

A Well, we're in the midst of putting out one on the internet as it relates to cable television and high speed modems. We haven't completed that, but everybody is interested in the internet. They want more of it faster, and there are high speed modems that can provide that, and cable television has a real opportunity to play in that game. So we have a study that, again, should be coming out this summer.

Q Okay. Now, any others that are general rather than client specific publications in cable television?

A Not that I can think of right now.

Q In your--it's a quarterly news letter you send out?

A Yes.

Q Is the subject of cable television covered in there?

A It's one of the topics, yes.

Q And is that a regular topic each quarter?

A Yes.

Q And do you have responsibilities with respect to the information there?

A Sometimes. I'll write some of the articles. We have a person that's in charge of the newsletter. And used to, I basically was the newsletter editor, but then I graduated from that a few years ago and we have someone who takes care of that, and now I'm just a contributor.

Q Now, you mentioned that you have your offices in Singapore?

A Yes.

Q And you have one in London?

A Yes.

Q Tell me about the--we're going to talk about you specifically in a little while, so you don't have to talk about you specifically at the moment. Tell me about generally the international scope, the business of The Strategists Group.

A Well, internationally, we work in really all countries, just about all the countries around the world for various purposes. We'll work for the telephone companies which frequently are government owned. We'll work for many U.S. companies that have activities internationally, and the projects can range from executive interviews, surveys, operational and financial reviews, appraisals, business planning, really the same types of projects that we would perform here in the U.S.

Q Okay. Now, I want to focus it specifically on cable television, not telecommunications in general. Does that affect your answer in terms of the global breadth of your company?

A No.

Q Okay. Still the same kind of services for cable T.V. clients around the world?

A Yes.

Q Now, give me an example of the kind of clients of The Strategists Group. You don't have to name all your clients, but give us an example of who some of the clients are or have been.

A Well, large banks like Citibank, Nations Bank, large investment houses such as Shearson Lehman Brothers, Merrill Lynch, Kidder Peabody.

Q Let me stop you there. We're talking about the financial industry. What kind of cable T.V. services would they generally need, without being specific as to assignment? Why would a bank or an investment company want to talk to you about cable television?

A Well, a bank would come to us at various stages. If it's before the project, they might have us review a business plan

that a potential client had prepared. If it's at the initial stages of financing, they might want to determine what the value is, particularly if they're bringing in a minority partner or any kind of partner, then they'll want to know what the value of the company is so they'll know if the amount of ownership allocated to that party is reasonable.

During the course of a loan, we may very well be brought in to review the operations, review the financial performance, and give an opinion about that. Then particularly later in the loan, if there's some deviation from the expectations, then there may be a need to change the financial arrangements or at least get some kind of an explanation or clarification about why things happened like they did. So we'll do a review of the operations, the finances, the technical as well.

Then at the end of the game where there's a sale of a property, they could very well have us give an opinion on what the reasonable value is of that property, and how the asset should be allocated.

Q Okay. In addition to banks and investment banks, what other clients generally does The Strategists Group have in cable television?

A Entrepreneurs that wish to start, buy cable companies or start a cable company, will come to us sometimes for valuation purposes, for business planning purposes, and particularly if they have a business plan, they may want us to assist them with that, or to even create it ourselves. Other clients, particularly internationally, are some governments that have telephone companies as part of their activities.

Again, going back domestically, the regional Bell companies are clients of ours as well.

Q For cable television services?

A For cable television.

Q Okay.

A They have a strong interest in cable and they want help.

Q Okay. Are any established cable television companies clients of yours?

A Yes, many.

Q For example?

A Nearly all of the top 25, including TCI, Time Warner, Continental, which is now U.S. West, part of U.S. West, ComCast, Falcon.

Q Okay.

A All of the large companies, and a number of small ones, I mean, down to the very smallest company. They have needs, too.

Q Prior to being retained in this case by UIH, had you had any engagements by UIH?

A By UIH? No.

Q Okay. So you'd never done work for them prior to your engagement in this case?

A No.

Q And had you ever done any work for Mr. Wilson's law firm prior to this case?

A Holme Roberts?

Q Right.

A No.

Q Had you ever done any work for my law firm prior to this case?

A No.

Q Have you ever seen either one of us prior to this case?

A No.

Q Do you ever want to see either one of us again?

A Do I have to answer?

Q Just so we put it in perspective, in this case, you're providing litigation consulting services; correct?

A Yes.

Q And so we can put it in perspective, how significant is litigation consulting in the overall scheme of your business?

A It's really a very small portion of our activity. And it includes things that we do all the time, but for those things to be used directly for litigation purposes, it's very small.

Q When you say it includes things we do all the time, what do you mean by that?

A Valuation.

Q Okay.

A Primarily.

Q So like being here today, it includes valuation, but the fact that you're here today is not something you normally do?

A That's right.

Q Okay. And as you personally, is there--is it a significant per cent of your time personally that you spend advising in litigation or testifying?

A No.

Q Now, you testified about a research group that you have at The Strategists Group. Tell us a little bit more about that and what it does.

A It's called the Consumer Research Group. It used to be called Market Research Group, but most of the activity was focused, or has been focused the last couple of years on consumer research, and it's headed by Dr. Book, Sam Book, and we perform, again, a range of activities in that group, some being executive interviews, focus groups, surveys, and then sometimes just general market research about various countries, companies, technologies, things like that.

Q Is it a normal part of your business to stay current with respect to what's going on in cable television throughout the world?

A Yes.

Q And does this group assist you in that?

A Yeah. I am assisted by them, I mean it's part of my business to do that anyway.

Q Do you personally stay current as to what's going on throughout the world in cable television?

A I try. I mean, it's a big world and I do the best I can to stay familiar with it. And then as need be, I'll, you know, focus on a particular area or particular technology, and focus in on that.

Q All right. Now, let me, before we start talking about your particular expertise, let's just find out a little bit who you are when you're not valuing cable television systems. Where were you born? Where did you grow up, go to school?

A I was born in Texas, Temple, Texas, Central Texas near Austin. I grew up in Central Texas and went to Texas Tech. University in Lubbock, Texas.

Q Did you get a degree?

A Yes, Bachelor's of Business Administration in Accounting. Then from there, I went to the University of Missouri at Columbia and I got a Master's Degree in Accounting there as well.

Q Are you a certified public accountant?

A Yes.

Q How long have you been a certified public accountant?

A Since 1972, 25 years.

Q Okay, go ahead. I interrupted with that. You went to Missouri, you got an accounting degree?

A Yes.

Q Did you get any other degrees?

A No.

Q Okay, what did you do after that?

A After that, I worked for the U.S. General Accounting Office in Washington doing auditing and financial analysis of defense contractors.

Q And then after that?

A After that, I was in the U.S. Army for two years.

Q Did you serve overseas?

A Yes.

Q Where did you serve?

A In Vietnam.

Q And when you got out of the Army, what did you do?

A After that, I returned for about a year to the General Accounting Office, and that would have been in 1970 and '71. And in 1972, I joined Malarkey, Taylor and Associates.

Q Now, has that been an uninterrupted employment for you since 1972, or have you done other things in the meantime?

A It's been an uninterrupted association. There were three years in which I was employed elsewhere.

Q Okay, tell us about that.

A Okay. In 1975, after I'd been with Malarkey Taylor three years, the cable industry as a whole was feeling a little bit of stress at that time, which means consultants feel corresponding stress, and the level of our activity was such that I was needed to still perform services, but not on a full-time basis. So I took a position with the U.S. Renegotiation Board there in Washington, which again was a quasi government entity that performed, again, audit and review of government contractors.

Then after about a year, I became the Chief of Internal Review for the U.S. Army Communications Command. They were in charge of all of the communications at a hundred or so Army military installations around the country, and at the various possessions, territories. So in that role, I had a staff in which we did financial and operational reviews, and then certain trouble shooting requirements that we had.

And after a couple of years, I was ready to return to Malarkey Taylor. The situation was such that I could return on a full-time basis, and I did. During that time, I was still continuing to do the financial modelling and financial analysis, so I stayed up with the industry and with the methodologies.

Q And so you've now been with Malarkey Taylor, The Strategists Group, ever since?

A Since 1978.

Q Okay. Now, you have a CPA, certified public accountant license; right?

A Yes.

Q Certification. Are you also an appraiser?

A Yes.

Q What does that mean?

A Well, an appraiser is someone who determines a financial value for an asset or a property.

Q Do you have any certification as an appraiser?

A Yes.

Q What is that certification?

A I'm a senior member of the American Society of Appraisers, the ASA.

Q Tell us what the ASA is. Tell us how you become a senior member. Two questions.

A Okay. The ASA is probably the oldest appraisal certification organization. I think it's like since the Thirties, or something like that. It's at least 50 years old, 50, 60 years old. And it was one of the first to set out standards for appraisers, and then set up qualifications for certification, and one of the first to receive recognition by courts and the government and various other parties of what the certification meant. The second part--

Q Well, the second part is what do you do to become certified as a senior member of the ASA?

A That's several steps. The first is that you need to have some type of degree in business administration. And then secondly, experience as an appraiser working with, you know, someone who is experienced in that area. Then you have to take a test.

Q Is it a hard test?

A Well, a lot of people don't pass it, so I guess it is.

Q I take it you did?

A I did.

Q All right.

A I have some staff members that have not.

Q You mean former staff members?

A Actually, yes, they are.

Q Would these persons or employees? Never mind, I withdraw that.

A But I do encourage it among the staff because it's excellent training for them. But that's the third thing; take a test. Then reports have to be submitted to the ASA for their review and approval.

Q What do you mean reports? You mean appraisals that you've done?

A Appraisal reports that I would have done. And then the last thing is to be interviewed by a designated person of the local chapter that's knowledgeable in your area of expertise to

kind of confirm your abilities and interests. And there's also associated with the test, an ethics test, of course, which you have to take. And then the ASA has to approve you and designate you.

To be an associate member, there's two years of experience requirement. To be a senior member, there's five years experience requirement.

Q And you're a senior member?

A Yes.

Q How long have you been certified by the ASA?

A Since the early Eighties. I don't remember the exact date, give or take around 1982.

Q Now, do you have an area of specialty or concentration in terms of appraisal work?

A Yes.

Q What is that?

A Business valuation.

Q What is business valuation?

A It's determining the value of a business in terms of its revenue capacity, profit capacity, more so than just evaluating a piece of property in real estate, or machinery and equipment. It's basically, again, evaluating more so the intangible parts of a business.

Q You mean its revenue potential, its income potential?

A Yes.

Q Now, do you have a specialty within business valuation, or an area of concentration that you've focused on for the last 15 or 16 years?

A Yes.

Q What is that?

A Cable television most specifically, then other related telecommunications properties. But the vast majority of my activity is in cable television.

Q And this would be appraisal of cable television systems?

A That and performing business plans or strategic planning, due diligence reviews, which involve finance, management, technical, and reviewing projections used in the business plans.

Q Okay, I've got a map up there that I'm going to come ask you to talk about in a little bit, but I want to cover a couple more things before we do, talk about specifically what you do in cable television. Before we do that, though, tell me the difference between the accounting function and the appraisal function with respect to evaluating a business.

A Well, the accounting function is generally looking backward to make sure that all of the financial elements going into an appraisal from a retrospective point of view are correct, accurate and fully described. Then that's about as far as the accountant can take it because they're pretty much limited by forecast rules and stuff like that.

Q What do you mean by that?

A The AICPA, the American Institute of Certified Public Accountants, has various standards about forecast that are fairly restrictive as far as what accountants can say and do concerning projections as opposed to financial performance up to a certain point.

Now, the appraiser aspect of it--I guess you wanted the difference?

Q Please.

A Between the two?

Q Yes.

A The appraiser, particularly in business valuation, is looking at the projected operations of the company and determining what those projected profits will be, and then determining how that's represented in terms of the present value, in other words, the value of the property, or the business.

Q So you--

A So the appraiser--I'm sorry.

Q Go ahead. You talk; you're better at this than me.

A The--so as far as the primary differences, the accountant basically looks at what is or was, and the appraiser starts with the current period and deals with what the projected activities will be.

Q And once--and this is going to be very general. But once you look and evaluate the projected activities, then what's the ultimate conclusion that you draw, generally as an appraiser?

A You determine the value of the business. That's the purpose of the exercise.

Q As of that point in time?

A Yes.

Q All right. Now, I want to talk about cable television specifically, and I want to talk first of all tell us how many years you have been working in the cable television industry.

A 25 years.

Q So that's your entire career at The Strategists Group you've been in cable television?

A Yes.

Q Now, you've talked to us about what The Strategists Group does. Now I want to talk about you specifically, what you specifically, the nature of your experience in cable television over those 25 years, and I guess to help you with that a little bit, let me break it down for you. First of all, roughly how many cable television projects have you been involved in?

A I've been involved in probably 2,000. Not all of those are appraisals, but I'd say probably 1,500 to 2,000.

Q All right. Now, we're going to go through every one of those here. Okay? I just wanted to see if they were still awake over here.

A I'm ready.

Q No, we're not going to cover all 2,000. But what I'd like you to do is this. We're talking 1,500 to 2,000 projects. Why

don't you give us categories of the kind of things you've done. We're going to talk a lot about appraisal and valuation, and so I definitely want you to include that, but tell us the other kinds of things you do in cable television work.

A Business planning is one area in which we'll prepare either parts or the whole plan. It may just be the financial projections. It may be assistance in the organization of the new business. Again, it may be the whole project.

Q When you're doing a business plan, what does that mean? What are you doing for a cable television client?

A Several things. We're helping them assess the market for cable television, the technology or their particular service or entry into that technology. We're assisting them with projections of revenues, expenses, capital expenditures, determining what kind of funding they would need for the business, and then obviously what kind of profit or benefit they would get from it.

We'll then assist them in setting up an organization for staffing, an organization for physical facilities, and pull it all together in an overall plan, indicating again what the funding requirements are and what the likely expectations would be.

Q Is this something you do for clients in the United States, or do you do it internationally as well?

A Internationally as well.

Q And this is you personally?

A Yes.

Q Okay. Tell us what else, what other kind of things you've done over your 25 years in cable television.

A Besides the appraisals?

Q We're going to talk about appraisals last.

A Franchise applications; we have not done many in the 1990's because all of the franchising was pretty much done. But during the 1980's, we did lots of franchise applications in which we would basically have to respond to a request for proposals or an offer by a city or county, and that involved preparing projections of the expected revenues, expenses, capital expenditures, funding requirements, expectations.

Then substantial effort in determining the appropriate technical plant or facility to implement, the programming to put in place, the various services that customers would want, and the usual market research of ascertaining what people want and what the likely penetrations would be and the rates that they would pay.

Q Have you done this domestically or internationally as well?

A Both.

Q Okay.

A There's some franchise renewal work that we're involved in now, but certainly not to the level of what it was back in the Eighties.

Another area is due diligence reviews, which is probably jargon, but it basically involves a financial review, a management review, operations review, even a technical review of an operation for various purposes. Again, it can be a

refinancing, it can be a change in ownership or reorganization. It can be just kind of a rehabilitation requirement if there are certain problems that they're having. So it can cover a wide range of activities, and it varies based on what the particular need is.

Q Okay. Any other categories of services, general categories that we haven't touched on, leaving valuation and appraisal aside for a moment?

A Again, we mentioned the litigation, but that's basically all the other services that just happen to be applied in a litigation format. Feasibility studies.

Q What is that?

A Determining the reasonableness or the feasibility of a particular activity or business. We basically start from the beginning and look at all the elements that go into the venture, which again is the revenues, expenses and capital expenditures, building up projected operations. Then determining the funding requirements, the expectations, and then determining if it's a reasonable or feasible venture or activity to get into.

Q Okay. Now, let's talk about appraisal and valuation work. Roughly, how many appraisals of cable television systems have you done?

A About 750.

Q Okay.

A Yeah, about 750.

Q Is that 750 systems or 750 appraisals?

A Projects, appraisal projects.

Q Okay. And does that mean that that's the same number of systems, or there would be more or less systems?

A They could have multiple systems. Sometimes it's only one. Occasionally, it will be as many as 10 or 15 as part of one project. They wouldn't average 10 or 15, but on average, there would probably be, on average, three or four systems per project.

Q So if you've done 750 appraisals, roughly how many systems have you appraised?

A Probably 2,000 or 3,000 systems.

Q And I'd like you to come over to the map, because I'd like to talk to you about where you've done your work. And I have a pointer. Actually, why don't you take this mike.

Now, we've got a map up here, which is--this is a portion of Exhibit 1629. Can you walk over there? I think the cord will take you that far. And try to stand so the jury can see what you're doing. And the defendants are invited to attend, if they'd like.

Mr. Jones, the map indicates that this shows where you have performed cable television work, evaluation work in red and other work in yellow. Can you describe briefly for us, first of all, the countries you've done the other work, and the kind of work you've done in those various countries? So let's focus on the yellow first.

A Okay, the yellow part again is the other countries where we've done projects other than valuation work. The country right over here is Peru. We did a large due diligence review

there when a company was buying--actually it was a regional Bell company, to be unnamed--that was buying a combination company that was a cellular company, a paging company, a cable television company and what they call an MMDS company, or what they call a wireless cable company. So we assisted them in the review of that to determine if it was a good acquisition or not, and what changes they would need to make when they took over.

This area right here is Brazil. We've done several projects there, primarily for OPIC, which is Overseas Private Investment Corporation, and the International Monetary Fund. They advance money for various purposes. One is to build infra-structure in communication properties in different countries, and we were retained by them kind of on an ongoing basis. Every so many months, we're to go to those particular installations and review them for management, finance, technical performance, and report back to them. Basically, they're just seeing that their loan is being administered properly.

Then over here is Australia. We've done several projects there, even going back to the late Seventies when they were trying to implement cable television back in the late Seventies, and they just did about three years ago. So it took them 15 years to ever get their legislative and regulatory scheme put in place. So we worked there really on feasibility type activities back in the late Seventies, early Eighties.

Then subsequent to that, and more recently, we've worked with Australia Telecom, who's a bidder and also a partner in some of the cable activity, and most of the more recent work is technical. They needed to know if their design was suitable, and we did some work with that. We've done some market research for them as well in terms of programming costs around

the world, what is it likely going to cost for them to program the network. So that's the Australian part.

Up here is Korea, South Korea, and our work there was primarily technical. They--before they did large scale cable franchising, they did some pilot projects, and they hired us to assist them in the design of those pilot projects, and then to actually monitor or oversee the construction of it and the selection of some of the equipment. So that's the Korea part.

Here is Spain. The primary activity there was consumer research. We did a large scale survey there to determine the need for and likely acceptance of cable television. And so that was a market research project.

Up here is Ireland. We--that was a technical project as well. They were building a cable television system in Belfast and we were retained to assist them in assessing the design and construction of that.

Now, there are many other countries in which we've done wireless activities for cellular, paging, various things like that. But these are the cable television ones.

Q Let's talk about the red stuff. That would be the places where you've actually done appraisal work. And I take it we're talking about you specifically. Could you talk about some of the--first of all, how many appraisals have you done outside of the United States?

A Probably 30 or 40.

Q Okay. Could you talk to us about some of those? We don't have to talk about all of them, but just give us an example of the work you've done like in Latin America, Africa, Asia.

A Okay. Right here, obviously right below the U.S. is Mexico. We've done some projects there. One was an over-build analysis where there was already a cable television system. Then there was another system proposed, and a request was made to a bank for the financing of that, and so they needed help on does this make sense, what's the value of this, what is the reasonableness of the projections, things like that. The others have been more straightforward appraisals of cable properties in Mexico.

Down here is Argentina. The activity there has been a combination of things involving mostly due diligence reviews. But a part of that was the financing aspect of it, because a large investment banking company, Citicorp, was making a significant investment in a large cable operator there and wanted to know what it's worth and what's the likely success.

Right here is Zaire. This is a project we did about five years ago, and I did not go on site, but we did send an engineer on site. We'll sacrifice an engineer for this.

Q Has he come back yet?

A He came back. He's no longer working for us. And that was a feasibility study, feasibility/valuation, but more of a feasibility study for a cable television system. And actually we did it for Kinshasa, Zaire, the capital, or the largest city, and the client wanted a cable television system. We went over there. We did our survey, review, and basically recommended that they do a wireless cable system, an MMDS system. We thought that was the best approach, because to put a lot of cable to serve only a few customers was a lot of money, whereas, with the wireless service, it would, you know, beam out over the whole city, and wherever the people were, they could get it without having to build miles and miles of cable. So we came

back, we changed the business plan, determined the funding and the expected results.

Here is the United Arab Emeritz, UAE. It's right by the Persian Gulf, and the client there was a government owned telephone company that wanted a--we've had two projects there. The first one was basically a feasibility study for cable television, resulting in total funding, total expectation, likely returns, likely value of the company at various points, because the desire was to privatize it down the road, so they wanted to know what it was worth and what the likely value would be.

Most recently, we've prepared the technical specifications for bidding for the property, and again, revisited the feasibility part and the valuation part. So that's UAE.

Here, contrastingly, is Israel. And the activity there has been primarily with one company, Israel Cable Systems, the Hebrew name being Yedon (phonetic), and our activity with them was kind of from the very beginning doing a feasibility study, putting together the business plan, assisting them in the financing, and determining valuations for financing purposes.

Last year, the property was--or there was a partial reorganization and some owners exited, so there had to be a valuation at that time, and we participated in that.

Up here is Norway. Our activity there was several years ago when they were privatizing their cable properties. One of the largest cable operators in Norway is, was the government, and they wanted to privatize those cable television systems, so they needed a whole organization plan. They needed to know what the government should expect in terms of valuing this, so we valued the properties as well.

The largest area of activity is in the U. K., meaning England and Scotland. And there, we have an office, so it makes sense we would have more activity, and that's been really over the last ten years and it's ranged from feasibility studies to start with, then the preparation of franchise applications, assistance in financing, then some of the partners would sell out, we'd determine the value of these various properties. Most recently, the companies are much larger now because several companies have bought up nearly everything, and when they sell or finance, then we'll do the appraisals and determine the value and how the assets should be allocated. So there continues to be a lot of activity in the U. K.

This one is probably my favorite. It's Bermuda. Fortunately, I took that project personally, and strung it out as far as I could. But it was a litigation case in which we had to determine the value of the property and then determine the management contribution that a certain individual had made, and then assign a value to that. So it only took about three days, but I did the best I could.

Q And let me just ask you before we take the break, you've got one of the red dots over in Asia.

A Yeah.

Q Two of them in Asia, as a matter of fact.

A The key ones over here are Singapore and Hong Kong. In Singapore, we did a feasibility study, and then financing and evaluation and a business plan for a combination of Singapore Telecom and Singapore Broadcasting. They were going together to provide cable television in Singapore and they needed to know everything about the technology, how it operates, what it costs, what can we expect in terms of financial return, things like that. So we did the project in Singapore.

In Hong Kong, prior to this involvement, we had a couple of involvements, one being in 1985. We were retained by the U.S. Government, in a roundabout way, the State Department, and the Hong Kong Government to do a study on the feasibility of cable television in Hong Kong, which we did. And we did our market research, built up the projections, determined the revenues, expenses, capital expenditures, what the funding requirements would be, and whether or not it was a feasible venture.

Following that, the Hong Kong Government did pass legislation and started to implement or get the ball rolling for cable television. Then in 1989--

MR. CHASE: Let me interrupt you a second, Mr. Jones.

Your Honor, it's 10:15 now, not withstanding what that clock says. Do you want to take a break at this point? Because we're going to talk a little bit about Hong Kong.

THE COURT: Yes.

MR. CHASE: When we get back.

THE COURT: All right.

(10:18 a.m-Recess accordingly.)

(At 10:35 a.m. on April 7, 1997, with counsel for the parties present, the following proceedings were had:)

(Jury present.)

MR. CHASE: Thank you, Your Honor. Before we commence, Mr. Munson and I, through Mr. Gilmore, received a joint request from the jury that we put something on the Elmo

for your benefit, and so before we get into some light stuff, I had something serious for you.

THE COURT: Well, I'm certainly glad that you're all getting rich here. It beats working, doesn't it.

MR. CHASE: Now, in light of this, Mr. Jones, I want to walk through your 2,000 projects, and I want you to determine the present value of how much these jurors will make by the time we get through the 2,000 projects.

DIRECT EXAMINATION BY MR. CHASE RESUMES:

Q Before the break, you were talking about experience that you had had in Hong Kong. Before we get to that, I just want to ask two short questions about your appraisals generally that you've done, your 750 plus appraisals.

Did any of these involve new companies or projected proposed companies?

A Yes.

Q Roughly what percentage?

A It's hard to estimate what per cent; less than 50 per cent. I would say maybe 20 to 30 per cent, maybe 20, 25 per cent. I'm just estimating that number, but certainly in that magnitude.

Q Okay. And your appraisal work, has it involved companies that would have programming production issues?

A Yes.

Q And is that in the United States or internationally?

A Actually more so internationally. Some domestically, but more so internationally.

Q All right. Now, let me take you to Hong Kong for a moment. I know you're rather go to Bermuda, but we'll talk about Hong Kong for a moment here.

You talked about some work you did there in 1985. Did you, on the basis of that work--at that time, you were working for the U.S. Government helping the Hong Kong Government; is that what it was?

A It was apparently a partnership between the U.S. Government, the State Department, and the Hong Kong Government. They basically hired someone in the U.S. to perform the project, and they promptly hired someone who knew how to do it, meaning us. So--but the actual client was the State Department.

Q Now, you testified before the break that it was to determine whether cable T. V. would be feasible in Hong Kong?

A Yes.

Q Did you conclude it was feasible?

A Yes.

Q Did you conclude it was something that would be successful?

A Yes.

Q And what was the basis of your conclusion?

A We did our analysis of the market in analyzing the demographics of the market, meaning household income, the television available in the market, employment, the status of the economy, things like that, getting kind of a baseline of the market itself. Then we did some market research. We didn't do extensive surveys and interviews. We did some, but not as extensive as were done subsequently. And based on that information, we got the best estimate that we could of what the likely penetration would be and what people would pay for the service.

Q What do you mean by penetration in this context?

A A subscriber penetration, in other words, the per cent of the homes that are capable of receiving cable television, what per cent of those homes would subscribe to cable.

Concurrently with that activity, our technical people were interviewing government officials, contractors, entities that would provide rights of way, like a subway or bridges, things like that, to try to find out what the reasonable way of building these--the new cable system would be. We talked to building owners and we talked to government building managers about what it would take to wire the buildings, since so many of them are high rise buildings.

We then pulled that all together into our projections of the revenues and the expenses and the capital expenditures, projected that out for ten years, and determined what the total cost would be to build it by the capital expenditures, determined what the likely operating losses would be in the early years, resulting in what the funding requirements would be, and then looked at what the profit would eventually be on the system during the ten year period, and then did our analysis based on that.

Q And this is what you did in 1985?

A Yes.

Q Did you then have an occasion to do another project in Hong Kong?

A Yes.

Q When was that?

A In 1989.

Q And who was your client in that project?

A It was a consortium named Hong Kong Cable Corp.

Q HKCC?

A HKCC.

Q It's actually a term the jury has heard a few times in this trial.

A Okay.

Q And that was your client at that time?

A Yes.

Q And what were you asked to do for HKCC?

A We were asked to assist them in the preparation of a cable television franchise application.

Q Who did you work with in Hong Kong? Did you work with Wharf?

A I worked with all the members of--well, our whole team worked with all the members of the consortium. We worked directly with the head of HKCC, Michael Elfik (phonetic).

Q What company was he from?

A He was from Wharf.

Q Okay. And what did you do? Tell us what you did in 1989 for HKCC.d

A Well, we worked again with members of the consortium, being Wharf, U.S. West, Codatel, which is a Belgium cable company, Sun Hung Ki, which was I think a real estate company, and Shaw Brothers, which was a production company primarily.

Q Program production?

A Yes.

Q Okay.

A We worked with them really in all of the areas. We were quite experienced in the preparation of cable television franchise applications. So the engineers were working with the engineers to determine the appropriate physical plant to put in place, what the opportunities were, what the problems were, and what the capabilities would be for different equipment that would be needed. On the market research side, we worked with their market research people to prepare questionnaires and assess the results of various surveys and interviews.

On the programming side, we worked with their director of programming to--in a couple of respects; one, to integrate it with the market research as to what people wanted in terms of programming. Then the other was more of a financial involvement in which we worked with them in determining what it would cost to produce the programming in terms of physical facilities, people and other expenses.

Then on the marketing side, we worked with their marketing people on strategies for the roll-out of the system, how it could and would be marketed, what were the pluses and minuses of different approaches, and how that integrates with the programming and the construction as well, because it's all a large timing issue and a strategy of what you do at certain times to maximize your number of subscribers.

Then we worked with the financial people in the projections primarily, in terms of the homes passed--

Q This would be the business plan you're talking about?

A Yes.

Q Okay. And what do you do? You say we work with the people. Tell me what you do.

A Work side by side with them basically going back to the beginning and looking at all of the basic assumptions and actually providing many of the assumptions, particularly on the--the guts of it, so to speak.

Q Guts is a word we can use.

A Okay.

Q Okay.

A Meaning again the revenues, expenses and capital expenditures that were unique to cable television. That's what we do. That's what we know the best, and besides being very good in preparing franchise applications, they hired us because we know cable television.

So we, you know, looked at the market research information, coordinated it with the technical information, the programming and whatever, and worked with the financial people on inputs to the financial model, and worked with them through the revenues and expenses and capital expenditures.

Q I'm going to be more specific about what goes into a business plan in a few minutes, because we're going to actually look at one and talk about the kinds of assumptions that are involved.

How long is it that you worked on this project with the HKCC?

A The initial intensive effort of putting together the franchise application and submitting it was about four or five months. Then we were involved another four or five months in responding to questions by the government, making presentations to the government and basically follow-on work.

Q Based on your work at that time, did you develop any additional views about the feasibility of cable television in Hong Kong?

A Yes.

Q What did you conclude?

A Well, it was an additional, but pretty much the same conclusion, that cable television in Hong Kong was feasible.

Q Okay.

A And attractive.

Q Okay. Generally, we're going to do more specifics later, but generally why is Hong Kong a good place for cable television?

A It's got a lot of favorable characteristics. It has a good economy. It has good demographics, again meaning people have good household incomes. There's an ability to pay for entertainment services. They have demonstrated a desire for entertainment services. They go to movies a good bit. I think there was a trade-off in the movie going when VCRS came along, and they had over 70 per cent penetration or acceptance in the market for VCRs, which is quite high, which shows they like movies, they like entertainment and they're willing to pay for it. Also, they have a high housing density, which for cable television generally is good.

Q Why is that?

A Because you have to build a pretty expensive plant, distribution plant, and the more homes you have in front of the plant, and the shortest distance you can, you can divide that among the plant, and the cost per unit is lower than if you strung it out and it was less dense. So density was favorable. They had really I think an under served market. They have a couple of fairly strong television stations, but nothing like a large city in the U. S. that might have 10 or 15 or even up to 20, but certainly 10 or 15 television stations. They had two primary stations, so they were pretty much under served for television viewing. So the market had a lot of favorable characteristics that lent itself to cable television.

Q Did your work in Hong Kong in 1985 and 1989 provide you with any information or experiences that were useful in connection with your assignment in this case?

A Yes.

Q Generally, how so?

A A good understanding of the market, the data that I just described, the contacts that we made while we were there in terms of personal interviews that we made, just a personal visual understanding of how it's organized, where things are, when we talk about a high rise dense community, what it looks like, what it means, how does this work, things like that. And just to see also the level of shopping that they do, which they are spenders and pretty aggressive shoppers, at least by our standards. In other words, they were crowded and--

Q When you say aggressive, is it kind of like a hockey game?

A No, not quite like that. But it's not a casual stroll in the store kind of thing. It's a lot of people out looking, shopping. And so there is disposable income to be spent.

MR. CHASE: Your Honor, at this time--well, let me ask you one other question, Mr. Jones.

Q (by Mr. Chase) Have you ever been accepted or qualified as an expert in court before?

A Yes.

Q On what expertise?

A Several, but primarily as an expert in cable television matters and cable television appraisals, as well.

MR. CHASE: Your Honor, at this time, we will offer Mr. Jones as an expert in cable television, an expert in appraisal of cable television, and an expert in appraisal of cable television in Hong Kong.

MR. MUNSON: No objection.

THE COURT: All right, go ahead.

Q (by Mr. Chase) All right, now you're an expert.

A Thank you.

Q Before I ask you about the specific opinions that you've given in this case, you're going to have to educate us a little bit, and we're going to have to ask you to teach us generally how you value a cable television system. Okay? And for purpose of this, I'm going to start you on a visual. If you could look at Exhibit 1613?

Now, I don't believe these are in the jury books, but I'm going to put it up on a chart. In fact, what I'm going to want you to do, Mr. Jones, is you were so wonderful coming down here before, I think that we're going to have a--we're going to have you come back.

All right, why don't you come on down here, Mr. Jones. I'm going to put these up on the easel.

THE COURT: 1613 has not yet been received.

MR. CHASE: Okay.

Q (by Mr. Chase) Mr. Jones, you have 1613 in front of you. Can you tell us what that is, please? That's A, B, C, D and E.

A It's a series of graphs involving various components of a cable television system and showing their change over time.

Q And have you reviewed this and can you attest to the reliability of it?

A Yes.

MR. JONES: Move the admission of 1613 A, B, C, D and E, Your Honor.

MR. MUNSON: Well, objection, Your Honor. I, for one at least, don't have any idea what this is.

THE COURT: Well, go ahead and voir dire.

MR. MUNSON: Without some more testimony.

VOIR DIRE EXAMINATION BY MR. MUNSON:

Q I've got 1613a. What exactly is this?

A 1613(a) demonstrates the pattern of capital expenditure investment in a cable television system in the early years compared to the later years.

Q Well, is this a hypothetical cable TV system you're talking about here?

A This is just for a general cable television system. We may have taken it from another specific document, but the purpose is not to tie it to any particular system.

Q The numbers on the left-hand side that say Capital Expenditures, you don't know whether that's from a real situation or a hypothetical situation; do you?

A I think it was from a real situation; I just don't recall what the--what the system was.

Q And then with the--the line that plays out to the right, which measures capital expenditures over years on this either hypothetical or real system; is that right?

A What's the question?

Q Is it right that the line that the line that you have here that goes from left to right is meant to--will you tell me what is that meant to represent?

A Again, it's meant to represent the pattern of capital expenditures in a typical cable television system.

Q But again, that--those expenditures that you plot here are not tied to any particular real world cable TV company; is that right?

A I think they are; I just don't know which one.

Q But you don't know which they are?

A That's right.

Q I take it on the--on the other chart that followed this, the second one talks about net revenues; is that right?

A Yes.

Q And it's got net revenues it shows on the left-hand side of the page, I take it that net revenue number likewise you don't know whether that ties to a real company or a hypothetical company; is that right?

A I know it is tied to a real company; I don't know which one.

Q You don't know which real company it is?

A That's right.

Q It could be one of any of the thousands of companies for which you've done valuation?

A It could be one of the thousands.

Q So it could be any one of those several thousands for which you did evaluation work?

A No, I mean, we--we looked at particular of large cable systems and we had a group we'd used for franchising purposes, for appraisal purposes, whatever. And I know it was out of a group of systems that were large systems, so it wouldn't be the one of thousands, it would be one of several hundred, but nevertheless, it was a large system.

Q So all you know about the company from which these numbers are drawn is that it's from a large system; is that right?

A That's my recollection.

Q And it could be one--any one of hundreds of other systems; is that right?

A Possibly hundreds. A few. I mean, we only selected, as I recall, probably half a dozen or so from our files to--to draw these--these documents.

Q But you did--you did valuations of hundreds of large systems; correct?

A That's right.

Q And the numbers that are here, you say are drawn from one of those hundreds--hundreds of valuations of other systems; correct?

A Yeah, it's one of a small sample that we--we drew from that group. And, again, I don't recall the name of it.

Q But you started with hundreds; right? You did hundreds of valuations of large systems; correct?

A Yes.

Q And the number here is from one of those several hundreds; correct?

A Yes.

Q And you don't know which one of those hundreds its from; right?

A I don't recall which one it is.

Q Likewise, your chart that talks about operating expenses, the same--it's the same situation there; right? You don't know which company those numbers come from; right?

A That's right.

Q Okay. And then the next chart which is 1613-D talks about net revenues, operating expenses and capital expenditures, same situation there; correct?

A Yeah, I just don't recall what the system was.

Q Right.

A And it may very well have been the Wharf franchise application. I just don't recall.

Q So you don't--you don't know as you look at these various exhibits, 1613-A through 1613-E, which is the last one in annual net cash; correct?

A Right.

Q You don't know whether the numbers on which these are based come from Wharf Cable numbers or some other company's numbers; is that right?

A That's right.

Q And you don't know which of the several hundred of companies on which you did appraisals that these numbers could have come from if they're not from Wharf Cable; isn't that right?

A I don't recall specifically which one. Again, we provided information from a sample of them actually to counsel and actually they--they prepared the ultimate--

Q Well, let's ask--

A --ultimate--

Q --that. Who prepared these charts? Did you prepare these?

A I provided the information for it, I provided some preliminary information and went over the--the information that I was provided to them. I did not print out and copy this document.

Q Well, let's make sure I understand. My question was whether you prepared these actual physical pieces of paper or not? I take it the answer is no; isn't that right?

A I provided the information for them. I didn't prepare the--the graph.

Q So you provided the information, but you didn't prepare the document; right?

A No.

Q The document was prepared by lawyers for UIH; isn't that right?

A I don't know if it was lawyers for--I guess it was lawyers for UIH, a graphic company that they would have used.

Q Okay. But if--

A I didn't know lawyers did this.

Q Lawyers did this, you didn't; isn't that right?

A That's right. I--I sent some preliminary graphs to them that looked just like this, but I did not prepare the eventual document.

MR. MUNSON: Your Honor, I don't think there's an adequate foundation laid for these. The witness doesn't know where the data came from that's displayed here; he doesn't know whether it's from Wharf Cable or one of several hundred potential other companies; he doesn't know if it's hypothetical numbers; he didn't prepare these documents, they were prepared by counsel. So I don't think they should be admitted into evidence.

THE COURT: Well, the objection will be overruled. Mr. Munson does raise an important point and that is that these Exhibits are to illustrate the testimony, they're not to be misconstrued by you as being proof of any actual damage or not in this particular case, but to illustrate his testimony so you understand it better.

MR. CHASE: That's exactly what I would like you to do with these documents.

THE COURT: They're admitted for that purpose. They're visual aids.

Go ahead.

(Trial Exhibits 1613(a) through 1613(e) were received into evidence.)

DIRECT EXAMINATION RESUMES BY MR. CHASE

Q Now, let me ask you, just using Exhibit--let me give you your pointer back. Using 1613(a), tell us what that is and tell us what it illustrates, please.

A 1613(a) titled Capital Expenditures Financing Model, again, is an illustration of the pattern of capital expenditures that are made in a cable television system. Clearly, the curve will be slightly different for every--every system, but the pattern will be very similar.

Early on, in other words the first year, in this case we use 1993, that was the year of interest, the capital expenditures would be quite large because you're building the plant. You're having to dig the trenches, attach to the poles if you use telephone poles or power poles, you have to put the--your head end or your central office in place, you have to build the

studios, you have to do all the things that you would in initiating a cable television system. So that's where the big expenditure is and right up front is for the capital expenditures.

Now, that can go over six months for a small system; it can go over three or four years for a large system. So for certain systems, it would come out even further; others it would spike down very quickly. So it will be slightly different for, yeah, each system, but the pattern will be the same.

Then as you go out, you continue to have some capital expenditures for various purposes, frequently or generally it's for the extension of the plant. You build all that you can build in the early period, then there are extremities to the plant that you want to finally pick up, you may not have built them to start with because you didn't have right-of-way permission, you know, across a bridge or something like that. Also there's growth and extensions. When there's a new development that goes in, you build more plant and you experience capital expenditures.

Also, subscriber converters, set-top boxes have to be replaced, there's a continuous capital expenditure for that. If programming is a significant part of it, of the activity, then there's always cameras and production equipment that you have to replace. So the capital expenditures will continue for some period of time. Sometimes they're down closer, sometimes they'll be, you know, higher depending on the requirements.

Then after some period of time, you know, it can vary, seven, eight, ten, 15 years, maybe longer, there can be additional capital expenditure for an upgrade or a rebuild. Sometimes technology changes such that you're going to need to spend more money. Or you have certain competition and you have to do things to the plant to meet the competition or eventually you have just an obsolescence factor that you have

to spend some money on. So the--when it happens out here, is--is hard to determine. It depends on the plant, the market, everyone is different, but this initial general pattern is pretty consistent.

Q Okay. Let me ask you to stay where you are and I'm going to put 1613(b) up there. Tell us what 1613(b) illustrates and how it works.

A 1613(b) is a--the pattern, a fairly typical pattern of a revenue growth. Obviously it starts at zero; no money on day one, no customers, no--no money. We get customers and the--the revenues grow. It will increase fairly slowly in the first--first time period because there's kind of two things going on that keep you from maximizing everything. You're building the plant, to start with, so you're only able to market to those homes that you pass. And as you pass more homes, then the revenue can accelerate.

The other side of it is the marketing side. You have to market the service and get the customers. So, again, early on you have the compound effect of trying to get the plant in place and marketing to get the customers. That all starts to--to kick in and accelerate and then will continue to grow as additional services are provided, which generally entail some additional rate and rate revenue. It continues to--to grow as you increase your subscriber penetration.

In other words, once you make the first marketing pass, you're not going to quit there, you blitz it for all of the new homes you pass, but then you have what they call a re-marketing effort; you go back, you try again and you keep trying. Particularly if you add new services, then you go back, there's another reason for them to finally say yes, so you continue to add more subscribers, you add more services, you

might again add things such as additional pay TV channels, whatever service would be attractive.

So the revenue will--will continue. Plus, along the way, you're building out more of these extensions and you're building more plant. So all of those things work together to keep this line going up. I mean, it'll--it won't go up indefinitely, it'll plateau out and it'll continue to grow because even if you stop with subscribers you're probably going to have normal inflation increases in the rates and stuff like that. So it'll continue to grow, but it'll tend to level out eventually.

Q Okay. Let me take you to the next--

A That's fairly typical.

Q Oh, I'm sorry.

A I'm sorry.

Q I don't want to interrupt revenue. Are we--are we done with revenue?

A We're done.

Q Okay. Now, we've done capital expenditure, we've done revenue. I want to show you the next one which is C and ask you what this illustrates and how it works.

A Exhibit C is operating expenses, as--

Q For the record, that's 1613(c). I'm sorry. Go ahead. I'm sorry, Mr. Jones. Go ahead.

A Operating expenses and as you can see, it doesn't start at zero, it starts up the--up the line because you've done all of this

pre-operating activity in preparation for launching the system. So you're not starting from scratch when it comes to expenditures. Actually, they occur back in this preceding period and those amounts are capitalized and recognized on that first chart we had on capital expenditures.

So expenses don't start on day one of--of the system, they start prior to that and you account for it a little differently. So just like expenses--just like revenues, the expenses spike up pretty quickly in the early--early periods because you're doing lots of things. You're doing an intensive marketing effort, you're adding people to the system, so you have a lot of customer service activity, lots of calls, questions, concerns, follow-up. So expenses spike up pretty quickly.

Then they start to track with your normal additional subscribers, additional revenues, that type of thing, your marketing efforts. So it--it tends to level off--not necessarily level off, but grow at a much more reduced rate, but it will continue to grow even though you experience economies and things like that, you're still adding customers, you're still experiencing inflation because you have to have salary increases, your rent increases, your property taxes increase. So all of those things will keep--keep increasing as well.

And as you build out more plant, you're passing more homes, marketing more people and doing the same things you did back in the beginning. So it's a fairly, fairly typical operating expense track. In other words, spikes up at the--you begin somewhere up on the--on the axis, then it spikes up and then starts to smooth out.

Q Okay. Now I'm going to show you 1613(d), which looks a little like my hair in the morning. And ask you what--what this illustrates.

A Well, this kind of puts them all together in terms of a plus and a minus. In other words, when we showed the revenues before it was a plus. Revenues are always a plus. Operating expenses, we showed them growing up, but they're not a plus, they're an expense or a cost going out of the company. So we tried to put that together on one schedule here, one form here and so we see that the capital expenditures were, as we indicated. They--I'm sorry.

The revenue starts at zero and then--and grows. And a little bit at the first. You may have high penetrations and great acceptance early on, you think you're doing great, but again you're only passing so many homes. That's why it looks fairly, fairly low. It's not as if they're grinding away and not doing, you know, a good job, it's just you have to pass the homes to get the revenue. So we see how the revenue tracks up.

Then the operating expenses, as we indicated, start somewhere on the line. Before they were up here, but we were showing the revenues as--just to kind of show the total amount. Now revenue is money in; operating expense and cap X is money out. And so the operating expenses start down the line and it shows that the--they actually grow pretty rapidly, then they start to ease off and it's kind of just the flip of the curve that we have before.

And with capital expenditures you can see that they start out big time, right away, because, again, you're building the plant. Then it eases off and then trails along.

So revenues were money in and these are the two key items of money out. So it's just to kind of get a better, better relationship between the two. It's the same curves, just shown altogether.

Q Okay. Let me show you the last one in this series and that would be 1613(e). Tell us what this does.

A This is kind of the combination of them. We had the three lines, if you add the revenue, subtract the operating expenses and cap X, this is the net cash. And you can see that the combination of no revenue to start with, the heavy operating expenses and capital expenditures would start you way down the curve.

Then in this case it even accelerates a little bit and at the end of the first year you're--you have even a larger amount just due to the large operating expense combined with the large capital expenditures and the minimal revenues or modest revenues.

Then things pick up dramatically. Revenues take off, you've built the plan, pretty much, and the expenses continue to accelerate but not as rapidly as they were. And in this case, at the end of the third year, about the third year, it shows it breaking even on a net cash basis. In other words, at that point you're not taking any more money out of your pocket and putting into the system, it finally starts to become positive and that's when the period of investment ends. You're not covering any operating losses or capital expenditures above and beyond your revenues at that point. Finally the revenues kind of take over and they start to carry the day.

Now, this can vary with different systems. You know, where--where the net cash break even is depends on all kinds of circumstances with every system, but this is the typical, typical pattern. Way down to start with, then it curves up to--to the break even line and then takes off after that. And this is where you make your money.

Q All right. Let's ask you to return to the chair.

Are there various methodologies that you can use in valuing a cable television system?

A There are various methodologies that you can use to value nearly anything and the--there are basic methodologies applicable to cable television.

Q Why don't you tell us generally what they are and then tell us which one you've selected for your assignment in this case?

A Well, one is a cost or replacement model. In other words, you determine the value of a property by what it cost, either originally or to replace. Another is--

Q Well, let me ask you this. Have you--have you found that method to be appropriate in the valuation that you've done in this case?

A No.

Q Why not?

A Because it doesn't recognize the--the value of subscribers, the growth in the system. It doesn't recognize the whole revenue and income side of the business. All it focuses on is the tangible assets, the hard assets meaning the plant and facilities.

Q Okay. What's another methodology that you could use to value a cable television system?

A One that they call the market approach, sometimes a comparable approach, where you compare the particular system that you're looking at to other comparable systems that have traded.

Q What do you mean by that? You mean sold?

A That have--yeah, been bought or sold.

Q Okay.

A And have established a price on the market. So in that approach you take the system that you're involved with and seeking a value for and compare it to the prices of comparable systems that have sold in a reasonable time period near the--the point at which you're making the valuation. So that--that's called, again, a market or comparable approach.

Q Did you find that approach to be appropriate for valuing the cable interest in this case?

A No.

Q Why not?

A Primarily because it's very difficult to find systems comparable to the Hong Kong system. And each system has a range, a wide range of variables that make them unique. Even at that, finding any other properties, you have to find properties that traded during a reasonable time period and then you have to know the details of the trade to know if it was really an arm's length trade, was it some kind of strategic partnering arrangement, was it a reorganization. You have to know a lot about the trade to know if the price was reasonable.

Then if you get only a small sample, it can be pretty skewed. And you can average them, but if you're only averaging two, three or four transactions, it really doesn't tell you a lot. So we did not use comparables in this valuation.

Q Okay. What other methodologies are available for valuing a cable property?

A Well, the third one--there's really three, but the third one is what they call the income method in which--

Q I take it that's the one that you've used in this case?

A Yes.

Q Since you've eliminated the other two? Okay.

A It's only one left.

Q All right. Now, tell us a little bit about the method.

A With the income method, the--the current and projected income of a particular property is valued. It can be valued by some capitalization of a current income or it can be determining the present value of the projected income streams for--for the particular system.

Q Okay. Let me--we're going to do--we're going to do some of this in detail, but when you talk about the projected income or the projected expenses or whatever, are you talking there about the business plan?

MR. MUNSON: Objection, Your Honor. Leading.

THE COURT: Sustained.

Q (by Mr. Chase) What are you talking about when you're referring to those items?

A I'm talking about the projected financial results of--of the particular system. It might be a part of the business plan, but

most specifically it's the projected operating and financial results of the system.

Q Have you examined business plans in this case to draw your conclusion?

MR. MUNSON: Objection, Your Honor. Leading.

THE COURT: Overruled.

THE WITNESS: Yes.

Q (by Mr. Chase) And tell us what they were, please.

A We looked at the business plan that Wharf had prepared for a franchise application that they--they filed or intended to file, I'm not quite sure, I think they filed it, in the summer of '91, May of '91. Second set of projections and business plan were associated with the franchise application that Wharf submitted on September 30th, 1992. Then there were projections and a business plan and a financing memorandum that Wharf prepared in August--August 20th, 1993.

Q All right. It's that one that I'm going to ask you to take a look at now. It's Exhibit 1250 in the white book.

And, Mr. Gilmore, you're going to need the white notebook here. Or it might be at--no, I think you better look at the notebook. I don't know if you have the complete one there.

MR. MUNSON: Does he need all of them?

MR. CHASE: He just needs where Exhibit 1250 would be.

THE COURT: Okay.

MR. CHASE: Oh, wait a minute. Hold on a second. Actually, I want to make sure he's got the whole thing. Let me just hand the witness, I'll hand him 1250 here, I want to talk about the projection.

Q (by Mr. Chase) You have 1250 there, Mr. Jones. That would be the financing memorandum that you just referred to?

A Yes.

Q Now, this has some narrative that goes with it that we're going to ask you something about later and it also has at the conclusion of it a series of projections. Are you familiar with that?

A Yes.

Q All right. I'm going to ask you and I'm going to use this screen so everybody can follow what we're talking about.

I'm going to ask you to use the projections in this business plan as illustrative of what a business plan is, how it's set up and what it does. And this is the business plan that is part of the financing memorandum; right?

MR. MUNSON: Objection, Your Honor. At least compound.

THE COURT: Sustained.

Q (by Mr. Chase) All right. Let's look at this--let's look at this--

THE COURT: That's a single mounted double, but, you know.

(Laughter)

Q (by Mr. Chase) Let's see if we can actually see this on the screen. I sure hope we can because you might have to be more descriptive than ordinary in telling us about what goes into a business plan because some of this stuff is going to be virtually impossible to see. Yeah. Doesn't do much good having it--having it up on the screen.

Why don't you use this, though, and tell us at least the big categories. We certainly don't want to go through every line item of this, but what I'd like you to do is go through this, it's CNCL Consolidated Financial Projections. The bottom--it's in handwriting at the bottom of page 74. Are you there?

A Yes.

Q All right. Can you kind of take a stroll through this with us and tell us how this business plan is set up, what's it got in it, what it does and how it works?

A Okay. This is kind of the starting point after having done all of the preliminary work on assessing the market in terms of demographics. Just some preliminary physical and technical considerations.

At this point, this page involves a determination of the kinds of revenue--subscribers and rates that would be involved.

Q This is called statistical overview?

A That's the title of this schedule, is statistical overview.

Q Just tell us generally what kind of stuff is in there and where it comes from.

MR. MUNSON: Objection, Your Honor. Lack of foundation. This--this is a document that was prepared by--by Wharf and this witness is being asked to tell the jury where the information that's in here came from. And there's no basis for his being able to do that.

THE COURT: The objection is overruled.

THE WITNESS: The--the information and the methodology that I'm talking about is fairly common that we use in all of our appraisals, so--and in our business plans and valuations.

The starting point clearly is the total number of homes and there's a line there that tracks that across. Now, you can't just look in some statistical directory or some travel log or something like that and look at the number of homes. You really have to go to the--to the beginning and go to the government and get statistical information about where these homes are, which ones are even occupied, consider which ones are multiple units, which ones are single families, to even find out how homes are counted. If you have a single home and you have an apartment in the basement, does the government count it as one home or two homes or two units? And you need to know that for developing a--a business plan. So total homes is a very significant starting number.

Then the next aspect of homes is is it going to grow or even decline. But most likely is it going to grow and at what rate. But that's not enough. If it's going to grow, is it going to grow in single family units or multiple units multiple units? Is it going to grow on the fringes of the franchising area or are you experiencing a growth within the service area? Will it require additional plant, because if you've built your plant and the growth is within the franchise area in front of that existing plant, then that's good. You don't have to build additional

plant. On the other hand, if all of your growth is on the fringes, then you have to build additional plan.

So I don't want--

Q (by Mr. Chase) Let me--

A I don't want to linger on the homes, but it's a big deal.

Q I take it homes--yeah, it would be a big deal, but I want to--I want to--the jury can't see this and so I want to make sure that you describe it. How many years are these projections for?

A Ten years.

Q Is that typical?

A Yes--

Q Okay.

A --it's fairly typical.

Q Are there any other statistics on this statistical overview that you'd want to call our attention to for purposes of going through the plan?

A Yes.

Q Which one?

A All of them.

(Laughter)

THE WITNESS: I'll be very brief.

Q (by Mr. Chase) It makes my job easy.

A Yeah. No, this is what I do. This is--this is--this is what we do on a regular basis.

Q Okay.

A Besides the total homes available, the homes past is critical as well. You can see that in the next line down, kind of.

Q Take it that they can't see anything.

A Okay. But even after determining how many homes there are, you have to coordinate with the--the technical people, the construction people and the marketing people to develop a plan for the homes passed, because just because the homes are there, they're not good to you unless you pass them. And so you have to have--determine pattern of how the homes are going to be passed, whether gradually, depending on the construction requirements, if it's rapidly and that all ties into the--the marketing and the revenue.

Then the, after that, probably the most significant thing to consider is given the homes that you're passing, what percentage of those are going to be customers. And that's tied in again with all of the market research and the marketing and the programming that's lined up for the--for the system. And, you know, do you expect that to spike up rapidly or do you expect it to be more gradual, even who do you expect the early customers to be. You know, the heavy users, the pay TV or the minimal users because it effects the revenue pattern.

Then the last item on this page kind of ties those earlier elements together and that's the monthly rates. What do we expect people to pay? And that's kind of the culmination of the whole market research effort, comparisons to other systems that

we're familiar with and--and what information we have from the industry, publications that will indicate that. And try to tie that whole thing together about what people will pay for the various types of services, whether it's basic, whether it's pay and then to work with the marketing and programming people as to how you can package it the most effectively because you may be providing a whole host of basic channels but they may be provided in certain tiers or levels of service. And it's a whole marketing strategic plan as to how you can--can maximize that. And so it--all of those have to--have to kind of fit together.

So with this statistical overview, it just kind of sets the plate for--for the rest of the business plan by showing, you know, the homes you're going to pass how many of them you get and what you're going to charge them.

Q All right. Now that the plate is set, let me ask you to turn over to the next page and it's called Income Statement. And--and take it as a given that nobody in this room can see it except you and me. And describe for us what goes into an income statement.

A Okay. I'm not sure I can see it all that well, either. I can see the big, big print.

But the components, yeah, I can read the--the income statement is typical of most income statements, but the components are unique to cable television, certain ones are. You start at the top with your revenue categories and those are generated from the information that you prepared before in terms of determining the number of customers that you'll have, what the rates are. And so customers times rates yield revenues. And we do that for every category, for different types of basic service, the various pay services and any other subscriber service.

Then there are other revenues that are obtained if there's a--the rental of equipment, say the set top box or the remote unit that you use, there's generally additional revenues from installation charges, things like that. And there may be other--other things such as advertising, in the U.S. home shopping provides revenue to the operator. So there--there's a miscellaneous bunch of other revenues.

Q What about expenses? Is that where you'd go next?

A Yes.

Q Okay.

A Expenses, in this case are categorized as the TV operations, which includes a host of things being primarily the programming and the customer service. The cable operations is primarily the technical and some other functions. Corporate is pretty much is your typical corporate.

Q Okay. You don't--you don't have to go through each line item, but if you could just give us a general sense as to the kind of things that come into a business plan, using this one.

A Okay. Again, under the operating expenses, the categories may be slightly different elsewhere, but basically it recognizes the technical operating expenses, programming, customer service and the general and administrative expenses and the marketing.

Q And these are projected out for ten years as well?

A Yes, based on several things. The number of the customers you have, based on the number of miles or kilometers of plant that you've built and the level of activity that you have in terms of customers and turnover and churn.

So they do vary, but, I mean, there are some--some benchmarks, but nevertheless, you can't just take a benchmark and apply it. These are real numbers that are very, very well defined based on exactly what is planned on happening in the revenue and the capital expenditure side.

Q All right. And then you've got a category there called EBITDA. What is that?

A That's earnings before interest, taxes, depreciation and amortization.

Q What's that mean?

A It means EBITDA.

(Laughter)

THE WITNESS: But it means that basically it's a--

MR. MUNSON: We'll stipulate to EBITDA.

MR. CHASE: Okay. So it's kind of a language we all picked up before we came in here.

THE COURT: It's a dog sled race in Alaska.

(Laughter)

THE COURT: This jargon. I just wanted you to notice that--that when the Judge tells a joke, everybody back there laughs.

MR. JENTES: He tells a better joke.

(Laughter)

MR. MUNSON: Stipulate to that, too.

Q (by Mr. Chase) Mr. Jones, you still there?

A Yes.

Q Okay. EBITDA.

A It's a standard financial recognition of revenues less operating expenses. It's before you're dealing with depreciation, taxes, interest all of those kinds of things. It's often called kind of the operating income as well as the E-B-I-D-T-A -- I-T-D-A. So it's basically the operating income. It's income from the direct operations of the system before you get into any financing activities and stuff like that.

Q All right. Is there anything else on this page that you want to remark about before I flip it over?

A Well, on this page it then does track it through income, taxes, depreciation and amortization and ends up with a net income.

Q What you've got after taxes?

A Right.

Q Okay. Which is an appropriate subject at this time of year.

Look over on the next page, please, it will be numbered in the lower right as 76. And this one is called CNCL Consolidated Financial Projections for the same ten year period. And I want--want you to just take us through that. It's basically called statement of cash flow and tell us what that means and what's in there.

A Basically it's an analysis of the cash requirements for--well, the cash requirements of the system. And it--the first number at the top that you see is net income and it comes from the previous schedule. So after that, we then add back certain items that were previously deducted for income tax purposes because those items are useful for income tax purposes but they're not necessarily direct cash requirements.

Q Give us an example of that, please.

A Depreciation.

Q Depreciation?

A Yes.

Q Tell us why that's useful for taxes but doesn't cost anything.

A Okay. Okay. After we have gotten our operating income or our EBITDA from the preceding page, you have to progress through to the income tax and--and one of the items of deduction is depreciation. And depreciation is basically a charge that is made to recognize the expiration of life or useful capacity of an asset. In other words, this television monitor, it might cost $300, it has a three year life, so each year you might write off for tax purposes $100, but on the first day you paid $300, so for your income tax purposes you're not spending money each time, each year, you're just recognizing that initial cost. So it's a reduction to the operating income but it's not--

Q Now, just--

A --necessarily a cash requirement each year.

Q Just so we don't have a serious problem here, this doesn't mean the jury can run home and write off their television sets; does it?

A No, it's generally a business--

Q Okay.

A --write-off. If you--if you have a home, though, you can write off the depreciation of the--a rental home. You can write off that depreciation.

Q Okay. We don't want to get into giving tax advice here. We're not covered for that.

Let's keep going with what you were talking about here on the statement of cash flow.

A Okay. So after adding back these non-cash items like depreciation, there may be other items which are not necessarily income items, but they're cash that the company got. In this case, decoder deposits because it's not really an income item because the--the money is paid to the cable operator to supposedly hold in some general form of escrow as a deposit for--for the decoder. So it's not an income item on an on-going basis. One time deposit; the operator holds it. But on the other hand, the operator has that cash and it's cash for either deposit or--or use, depending on the circumstances.

So the top part essentially takes the net income and adds these additional items that will adjust it and show how much cash really is being provided from operations.

Q And that's what this page is all about?

A Well, that's the--that's the top part.

Q Okay.

A Then after that, it shows the application of those funds.

Q Let me stop a second. I'm going to try to blow up at least the category here. Ah. Has some useful purpose.

Okay. Application of funds. And maybe I can even move it over and show the first--the first--

A No.

Q Show the first area there. First set of numbers. Does that help a little bit?

Go ahead, Mr. Jones.

A In the application of funds, basically it's you've already recognized the application of funds of the operating expenses back on the income statement. Now we're recognizing the application of funds for capital expenditures or any kinds of acquisitions or other--other capital expenditure amount.

So in this case, it's we've recognized the amount of cash that's generated by operations. Now, the next step is to look at where that cash is going and to then determine how much over or under we have in order to determine how much funding we need.

Q Okay.

A And that's where it leads us. You'll notice in the middle of the page it has funding surplus--

Q Wait a minute. Let me zoom in on that. There you go. Okay.

A Okay. In the middle of the page it shows funding surplus or requirement. Basically if it has a bracket around it that means it's like a negative or a requirement meaning we're going to have to come up with funding to cover this--this amount. If it's positive, that means that our cash sources exceed what we're sending out and we have a surplus. And then it tracks that out for each year during the ten years. So--

Q All right. In this case, let me just get to the end of the--the end of the thing so you can see what it looks like at the end. Boy, this is really a bad copy. Okay.

And that shows at the end the year 2002 and then it has a total of the cash surplus that looks like 1-7-1-0; do you see that?

A I can't quite read--that's what it looks like on the screen.

Q All right. And this indicates that would be in millions of Hong Kong dollars; right?

A Billions.

Q Well, in millions--

A Time--times millions; you're right.

Q Yeah. So this would be 1 billion 700 and something million would be the cash surplus at the end of that period; right?

A Let's see what it says. Yes.

Q Okay. And the reason I'm doing it this way is because if I--it's the only way I can show it on the screen, is to piece it out.

Let me go back now to the topics and you tell me where you want to do in terms of explaining how this thing works.

A Well, then we work our way down. After we determine how much surplus or requirement or investment that we have to--have to make, the next step is to then indicate the sources of that and in this case it indicates the two logical places; equity and debt. And based on whatever arrangement or criteria that we've made, whether it's a percentage relationship or if it's a fixed relationship of so much equity or so much debt, whatever the financing relationship is, then it's applied at that point to accommodate the amount of investment that we have to make.

Then the next step after that is to look at what do we ultimately have in terms of cash because we have cash coming in through operations, cash going out for capital expenditures and so then we have to put in some equity in debt, pay off the debt. Basically what is the bottom line. This is the bottom line.

Q Let me--let me show what the bottom line is. At the end of that it says, "Ending cash."And it looks like 4 billion, 668 million Hong Kong dollars; is that right?

A Yes.

Q All right. And what does that represent again, please?

A Basically represents the cash in-house, so to speak, including the equity investment that--that's been made. But in this case it shows debt having been paid off so basically that represents the equity that was put in, plus whatever gain in cash has been made during that period of time.

Q All right. Now, the next page deals with capital expenditures, but I guess it's probably a decent time at this moment to just take a break.

THE COURT: Okay. 1:15, please.

(12:00 - Jury excused.)

(12:00 - Recess accordingly.)

AFTERNOON PROCEEDINGS

(At 1:20 p.m. on April 7, 1997, with counsel for the parties present and the jury present, the following proceedings were had:)

JUDGE JONES: Go ahead, please.

DIRECT EXAMINATION CONTINUES BY MR. CHASE:

Q Okay. Mr. Jones, I just want to cover one more page of this business plan that was out of Exhibit 1250, the Financing Memorandum. And if you could just briefly tell us what's on this page called capital expenditures and how it fits into the grand scheme of things.

A Page--

Q It's on page 77 down at the bottom.

A Oh, capital expenditures is one of the three key items of the revenues, expenses and capital expenditures. We showed the charts before about how significant amounts are incurred in the early periods. The amounts drop off considerably after the plant is built and then are only incurred for extensions and various things like that.

The items shown on page 77 of the financing memorandum are the normal cable capital expenditures that you would expect under the cable operation. It has the coaxle network. In this case it's a little different, we have a microwave capital expenditure because of the MMDS plant that was going to be built. Then the usual things of head end decoders, things like that.

So it's a ten year projection, similar to--or the same as the other schedules. And it then feeds into the cash flow schedules.

Q Okay. Now, I'm not going to ask you to go into the rest of the pages of the business plan, but we're going to be talking about the business plan as we go forward. Now, you testified that you--that you reviewed three business plans; '91, the bid case in '92 and then this '93 business plan; correct?

A Yes.

Q Ad did you formulate an opinion as to the reliability of the projections in the '92 and the '93 business plans?

A Yes.

Q What was your opinion with respect to the reliability of those projections contained within Wharf's business plans?

MR. MUNSON: Objection, Your Honor. Lack of foundation.

THE COURT: Overruled.

Q (by Mr. Chase) You can answer.

A After reviewing them, they appeared to be reasonable and consistent with cable industry practices and I viewed them as being reliable.

Q All right. Did you have any other basis other than just general cable industry?

A No, I had my personal and company experience in Hong Kong with the previous projects that we had done there. And then experience in other large international markets as well. So

it's a combination of personal experience in Hong Kong and a number of years of experience in the cable television in general.

Q Do you have an opinion as to whether the projections in these plans track the curve that you were showing us with respect to revenue expenses, capital expenditures and the like?

A Yes.

Q What was that opinion?

A That they do track the same general curves as--as those that we demonstrated.

Q Okay. Now, these are projections that we talked about; correct?

A Yes.

Q Are projections ever a perfect crystal ball of the future, to your knowledge?

A They--they don't always happen just as projected, so there are some deviations and bumps in the road. There's some pleasant surprises sometimes, as well. So they don't happen exactly that way.

Q And when you review projections for their reliability for purposes of giving your opinion do you mentally make room for error?

A Sure. Risk is taken into account, really from day one. If you recall, the first thing we looked at in the projections was the number of homes passed. And you go back to the beginning and each item in the projection, you look at the

likelihood of its being achieved as projected, then mentally kind of recognizing what the variations may be, then leading right straight through the--the construction, the penetration, subscriber penetration, the receptivity of the rates. All of the items you take into consideration, their reasonableness, likelihood of being achieved and the risk associated with that.

Q Is that something you did in your assignment here?

A Yes.

Q Is that something you typically do in a valuation?

A Yes, we do it in ever evaluation.

Q All right. Now, let me ask you, in this particular case have you been asked to give an opinion with respect to the value lost by UIH as a result of the alleged actions of Wharf?

A Yes.

Q And what is that opinion, please?

A It's really--I have four opinions.

Q Well, okay. Let's take them one at a time. Give me opinion number one with respect to your opinion as to what value was lost by UIH as a result of the actions of Wharf?

A Well, in March 1994, the value lost was approximately $67 million attributable to UIH's share of the value of the property at that time.

Q Okay.

A Then in October 1992, following the franchise application the loss--UIH's share would be approximately $50 million as a loss to UIH as of that date.

Q All right. Now, I just want to stop you there because I want to focus on those two opinions for a moment and then we'll go on with the rest of your opinions in terms of lost value.

Now, you've talked about earlier in valuing, you start by looking at the business plan and that's what we kind of walked through before lunch; right?

A Right.

Q Now, after you have gone through and evaluated the business plan, what do you do next generally in an evaluation and then we're going to walk you through specifically how you reached the numbers in this case, just so you know where we're going. But what do you do after you've looked at the business plan, such as we just did, what do you do next to determine value of a cable TV system?

A You mean after having gone back and evaluating all of the elements and the assumptions and the line items?

Q After evaluating all the--

A Oh, okay.

Q --things in the projections; correct.

A Okay. Because basically we go back to the beginning. We start at the beginning and we review all of the line items all the way through. Having done that and establishing the reasonableness of the assumptions and the projected revenues, expenses, capital expenditures and considering the--the risk

associated with those, we then look at what a terminal or a residual value or a company value would be in the last year of the projection.

Q You better explain that, please.

A In the last year of the projection, the system is still in place and doing fine and it's worth a lot of money. However, you don't necessarily do another ten year projection to try to recognize what that--that value is. It's not like an asset that you buy in the first year, you use for ten years, then you toss it aside and junk it.

Actually, with a business, after a certain period of time, in this case we're using ten years, the business has an increasing value. And so the owners of the business are sitting there with a very valuable asset in the last year. So just to recognize the profit that's been achieved in each year during that ten year period is--is not a fair recognition of the value of the entity or the thing that-- that they own.

So in that last year, we determine the value of the--of the property. And we do that by looking at the operating income in that last year and applying a valuation multiple. In other words, going back to our favorite word, the EBITDA, we take the operating income and apply a multiple to that. That's another way of saying we multiple it, by a number and that represents the--the value of the property in that tenth year.

So we have a combination of things that we're looking at as far as the value of the company. What it's earning or investing each year during the ten years and then at that tenth year what that value is.

Q Okay. Now, we're going to come back and talk in a little more detail when we do the specific valuation of this property,

but then what do you do after you've now applied your--now, first of all, let me ask you.

How do you figure out what multiplier to use?

A We use what's used in the industry, both domestically and internationally. Basically looking at the results of many, many, many transactions and looking at the pluses and minuses of why the multiple is at the high end of a range or the low end of a range. Then taking that information and applying it to the particular company that we are looking at, you know, does it have a lot of growth and potential remaining? Is it pretty well tapped out and requires significant additional investment? We look at all the pluses and minuses with the system in the tenth year or the last year of the--the projection period.

Q Let me interrupt you a second here, because I want to make sure this is clear. You don't wait until the tenth year to do this, this is all done when you're doing your valuation at the beginning?

A Yes.

Q You're projecting what's it going to look like in ten years?

A Right.

Q Okay. Just because sometimes you're mixing your tenses and I don't want people to think you're waiting ten years to do this.

A Right.

Q Okay. Go ahead. I'm sorry.

A No, it's done--it's done at the time that we review or create the projections. It's a part of the whole process.

Q What's the general range in the industry on this multiple that we're talking about?

A Generally it's eight to 12, eight to 13 times the operating income in that tenth year.

Q What multiple did you use in valuing the Wharf property?

A I used ten.

Q Any particular reason why you chose that?

A Well, at that time it is ten years old; that's about the only negative. You know, state of the art plant is being built, so it should be in good condition. The--there are additional revenue sources that are not recognized in the current projections that could be recognized and experienced by that time such as interactive services, video on demand, things like that.

It--again, ten is even--it's kind of a middle of the road multiple to apply at that time. The starting out and the expectation is that the franchising and regulatory scheme is good and should continue in the future. So it has a lot of upside potential that can still be experienced. So we looked in that range, considered what the pluses and minuses were and in our judgment a ten multiple was appropriate.

Q All right. So now you've got the results of the business plan showing how much money it's going to have at the end of ten years, you got your multiple. And then what do you do to determine value?

A We determine a discount rate to apply to that stream of income or profit. In other words, each year we have the cash flow or the operating income, then at the end of the ten years we have the residual value. And we have to use a discount factor to bring all of that back to today so that we can state a value for--for the company.

Q All right. Now, in the packet of materials you have in front of you, I'd like you to look at Exhibit 1628. Oh, well, I just learned that it's not there.

Tell you what, let me hand you my copy of 1628. It's not admitted into evidence yet and while we're getting extra copies, ask you if this accurately illustrates the steps that you just described in valuing a cable TV property?

A Yes.

Q All right. Now, for logistical reasons, all of which are my own, I've got to take this away from you, show it to Mr. Munson because I don't have--now we have copies of it. I'm sorry. Let me put 1628 in front of you.

Now I would move the admission of Exhibit 1628. Does Your Honor have a copy?

THE COURT: No.

MR. CHASE: Oh, well, see? Kind of hard to rule, I guess, without it.

THE COURT: No, but it is hard to rule correctly without it.

(Laughter)

MR. CHASE: Your Honor, we would move the admission of 1628 as being illustrative of the testimony and a way for the jury to better understand how these three steps work together.

MR. MUNSON: No objection, Your Honor.

THE COURT: It's admitted.

(Trial Exhibit 1628 was received into evidence.)

Q (by Mr. Chase) All right. Now, Mr. Jones, we don't need to spend a lot of time with this, but I would like it, please, if--could you come back? We kind of miss you down here.

Mr. Jones, using Exhibit 1628 could you just explain to us how these three steps work and what is illustrated by the ever decreasing piles of money on the right-hand side?

A In step one, again, we're using the baseline financial model which we've talked about is the October '92 application model and then the August '93 financing model. And using that we project out--or it was projected out and I reviewed and consider it reliable, we projected out what the cash flows of the operating income would be each year and then worked it down to where it was a net cash flow amount.

And looking at that over a ten year period, we end up with a large amount of money at the end. One reason is we have inflation on the way. And that's the--one of the main reasons why this amount would be considerably higher if we just added up that line of--line of numbers.

So we have to take into consideration time and risk and that's what we do in step two, we use a discount rate. It's similar to your investing money at a savings and loan or something like that or buying some kind of investment

instrument. In other words, if you're going to receive $100 a year from now and you buy that instrument today, and it's a discount rate of whatever, 15 percent, then today you would pay 15 percent less for that instrument so that at the end of the year you would have $100.

So much the same--same logic here. Over the--the ten year period we're going to have all these increases but to look at it today, what is this investment worth today, we have to bring it back to the present time and we apply a discount rate that recognizes again the time and the--and the risk.

Then the next step, which after taking the total amount of money, bringing it back to the present time, when we applied ten percent to it to recognize UIH's share of that value.

Q Okay. Now, go back to step one a second. You said it recognizes ten years. Does that also include the multiple that you talked about as well?

A Yes.

Q Okay. So that's the big pile and then it gets smaller as you discount it and then take UIH's share?

A That's right.

Q Okay. Now, if you could go back for a second and then I'm going to ask you a few more questions, then I'm going bring you back here just so you're aware of the program.

I want to talk about discount rate for a second. That's the percentage that you applied to bring it back to present value. Now, I'd like you to take a look at Exhibit 1640 which is, I believe, in the group of documents in front of you unless I've

once again failed in my ability to do that. Is 1640 in front of you?

A Yes.

Q Is 1640 a fair representation of how you build a discount rate?

A Yes.

MR. CHASE: Your Honor, I'd move the admission of 1640 so that the witness can testify about it.

MR. MUNSON: Just give me a moment, Your Honor.

THE COURT: Yes, sir.

MR. MUNSON: To see if I can locate it here.

(Pause.)

MR. MUNSON: No objection, Your Honor.

THE COURT: It's admitted.

(Trial Exhibit 1640 was received in evidence.)

Q (by Mr. Chase) Okay. It's time to come back. You know what? Actually, this is cruel. You can--actually this is probably big enough to be seen from everywhere. If you like being up here, that's fine. I don't mean to have you keep coming up and back, but you're going to be one of the few witnesses we've had to actually burn off weight off doing this.

Exhibit 1640, Mr. Jones, entitled Building a Discount Rate, now could you explain to us how you build a discount rate?

A We start with, as indicated here, risk-free rate; in other words, the best of all worlds, really. That's either long-term Treasury bill or a Government bond, something like that, that you would get from the Government that has very little risk, very little risk. When the Government needs to pay off certain bonds or bills or notes, they can issue more money and they always have money. So, there is very little risk associated with the Treasury bills and Government bonds. We call them risk-free; it's virtually risk-free. That's kind of a starting point. If we were just buying and selling risk free Treasury notes and bonds, we would probably be able to stop at that point.

Q Mr. Jones, let me stop you for one second. The spelling of Treasury, is that you or Mr. Wilson?

A I don't know who, but I spelled it correctly. I spelled it differently than that when I provided it.

Q All right. I just had to make it abundantly clear it wasn't me. All right. You start with the risk-free rate--

THE COURT: He might be able to get to be Vice-president if he continues to spell like that.

MR. CHASE: Can't stand the demotion, Your Honor.

THE WITNESS: So, we start with the baseline of the risk-free rate, but we have to recognize risk associated with it because this is not the perfect world and some of that risk is already recognized back in the projections. If you remember, we talked about the homes passed, the subscriber penetration, percentages, the likelihood of acceptance of the rates, pluses

and minuses with the capital expenditures, whether it will cost more or less to construct. So, a lot of the risk is driven into the projections, but still risk has to be addressed in the discount rate because it's going to be--the income or the profit that you receive is going to be received over a period of time. And, there's risk associated with that and there's a cost of money associated with it, as well.

So, after taking the risk-free rate, we add to it the financial risk. In other words, we are now dealing with private securities rather than Treasury bills and we're dealing with equity rather than Government bonds or Government notes. So, there's an inherent financial risk that's assigned to that and so you have to recognize that and add it to the risk-free rate.

And, finally, there's an additional risk factor and that's the business risk. If you look at the business very, very carefully, you have to recognize are there risks associated with that particular business? Not on a financial risk level; in other words, not that we're not in a currency exchange problem or anything like that. This is all financial risk. Now, we go directly to the business itself. You know, are there risks of achieving certain things? Are there risks of contracts failing? Are there various other risks associated with personnel? Things like that. Now, as much of that as we can, we like to recognize in the projections. That's where it's at. Then, we take any special additional considerations here.

So, basically, we take the risk-free rate, add to it the financial risk, business risk, and if we drew a line, we would have discount rate written below it.

Q (by Mr. Chase) Now, is this typical of the way you build a discount rate?

A Yes.

Q Did you build a discount rate in this case this way?

A Yes.

Q Did you do anything different in this case in terms of building a rate than you do in any other of your several hundred valuations?

A No.

Q Now, you've testified that you like to look at the projections and deal with risk there. Could you explain what you meant by that?

A Well, in the projections, you can have accelerating penetration rates, accelerating subscriber rates, things like that, that will kind of skew the results of the projections considerably. So, you try to take into account all of those possibilities within the projections, again more so than trying to tweak it with a particular number here. Because if you go to the projections, you're much, much closer to the actual event. In other words, if I study and I know the market well, I know the business well, I know what the pluses and minuses are of certain revenue expense and cap ex items--

Q What's cap ex?

A I'm sorry. Cap ex is capital expenditures.

Q Okay. If you know all that, then what?

A Then, you can feel fairly comfortable that you've addressed a lot of the risk associated with it as much as you can. Then, it minimizes, you know, a plus or minus here and makes it much easier to deal with because you're dealing with things that you know and believe and can deal with on a regular basis.

Q And, when you look at the projections and when you analyze the projections, do you do it with the idea in mind that you're looking to see what's the likelihood these will be achieved?

MR. MUNSON: Objection, Your Honor; leading.

MR. CHASE: Let me ask the question differently.

THE COURT: Sustained.

Q (by Mr. Chase) How do you compute risk or calculate risk into your analysis or the projections?

A In the analysis of the projections, if I really feel that the construction period is too rapid or the penetration is too high, something like that, then basically you need to look at it with either a reduced or an increased amount based on my understanding and my projection of what I think it would be. So, the projections have to be very carefully scrutinized and basically start from the beginning, build it up, and work through each line. It's not unusual that in some cases we'll revise items in a projection. If we're reporting back to a bank on a business plan, we'll change that item. I mean, it's our item, not somebody else's. And, we'll show what the result is from that. So, you recognize what the risk is and what the likelihood of achieving certain items are.

Then, you work all the way through and see what the effect is on the profit or the cash flow. So, you recognize the risk in the computation rather than holding off, holding off, and laying it all right here. You do it back in the guts of it where you get the actual workings of the system.

Q Did you do that in this case?

A Yeah, I didn't change anything. I did go through each line item and reviewed it and considered it as to whether it was achievable or not.

Q And, how would you be able to make that kind of judgment?

A Based on again the experience in other systems, experience in Hong Kong itself, and just my knowledge of cable television.

Q Okay. Now, I'm going to send you back to the chair before I call you back here again. You've got seven laps; you've got 10 to go. Now, Mr. Jones, I want to question you specifically about the valuation you did first as of March 1994. Do you remember expressing an opinion about that that that was a $67 million value to UIH?

A Yes.

Q Now look, if you will, please, at Exhibit 1621. Actually, I'd like you to look at a group of exhibits because they're going to all be dealt with as a group. Look at 1621, 1644, 1643, and 1642. And, don't ask me why they're numbered that way because they are a part of a group.

MR. MUNSON: I'm sorry, what are the numbers again?

MR. CHASE: 1621, 44, 43, 42.

Q (by Mr. Chase) Do you see those pages, Mr. Jones?

A Yes.

Q Do you recognize those as pages from the report you gave in this case?

A Yes.

Q And, as a group, what do they show?

A They show the value of the lost profits to UIH in March 1994.

MR. CHASE: Move the admission of Exhibits 1621, 44, 43, and 42.

MR. MUNSON: Your Honor, I object to these being admitted into evidence. Do you have copies there in front of you of these, Your Honor?

THE COURT: No.

MR. CHASE: I think they're in the group--yes, I believe they are, Your Honor. They're in--

THE COURT: In the group you gave me this morning?

MR. CHASE: They're in the group that we gave this morning, yes.

THE COURT: All right. Okay. Now, I do.

MR. MUNSON: Your Honor, two problems with these. One is that they are hearsay. They're from the expert's report. An expert report is hearsay; normally, not admissible into evidence because they are hearsay. I'm just saying he can testify about what he did, but the actual writing of the report is hearsay. So, that's objection number one. Objection number two, we spoke this morning about an issue that we raised before the jury was here, and if you'll look at the top of the first document in the list, 1621, the first line in the middle, and then the fourth document, 1642, the same issue; they both suffer

from the same infirmity that, I think, we addressed this morning.

THE COURT: The objections are overruled. The exhibits are admitted.

(Trial Exhibits 1621, 1642, 1643, and 1644 were received in evidence.)

Q (by Mr. Chase) Mr. Jones, I'm going to start with Exhibit 1621--oh, that's right, we are going to publish these to the jury and give them copies. So, Ms. Hutchinson will do that. Why don't you, in the meantime, come on back? Now, what I would like to do just as a little preface here is be able to show the jury how you did what you did and how you came up with what you came up with, but I don't want to go through every line item of these documents and I don't want you to have to repeat in detail everything you did. But, I think we should start at Exhibit 1621, and if you could explain what that is, and then we'll move to how you get to 1621. Do you follow me there?

A Yes.

Q Okay. Please, tell us generally what 1621 is, what it shows, and then we're going to look at the other exhibits to see how you get to 1621.

A This exhibit, I used three valuation approaches. This one up here indicating that the approach is based on the funding surplus or requirement, in other words investment, and the residual value.

Q That's that multiplier that you were talking about?

A Yes.

Q And, the funding surplus is what?

A The funding surplus is basically the requirements for investment. In other words, after taking into consideration again all the revenues, expenses, capital expenditures, what do you need then to build and operate this system? When it's a negative, that means you have to invest. When it's positive, you're making money. And so, this amount, this funding surplus or requirement, is computed for each of the 10 years. And so, over the 10 year period, we look at what is required for investment purposes. Or, on the other hand, what do we have in excess of that? And then, we look in the 10th year and apply the 10 multiple times the operating income. So, those are the two elements of this method.

Q All right. Now, let me ask you because under this method you show three different discount rates, and it comes up with three gross valuations in Hong Kong dollars. Do you see that?

A Yes.

Q All right. First of all, these valuations are in--this would be 5,508,000,000; is that right?

A Right. This is in Hong Kong dollars, this column. Then, it's converted to U.S. dollars. That's all that's happening in between here. We're just converting it to U.S. dollars by dividing it by 7.74, the exchange rate. Then, after determining that the value is this column--or, in this case, $712,000,000--UIH's 10 per cent share of that is 10 per cent of 712, meaning $71,000,000.

Q And, you have different numbers depending on what discount rate applied. Would you explain generally how that works? It looks like it gets lower as the discount rate gets higher.

A Right. These numbers right here change only because the discount rate changes. I didn't change anything in the projection. In other words, after determining what the projected operating income was, I didn't change anything in that. The capital expenditures, didn't change anything in that. Once we go through all of that and determine that those are reasonable, then we're down to discounting it to the present time and determining what the value is. So, it's due solely to these three discounts and you can see that as the discount rate gets larger, the value gets smaller. It's an inverse relationship. Whenever we discount it by again a larger discount rate, we'll get a smaller number because we're charging it basically with a heavier discount amount. So, using the same funding surplus and requirement and residual value in each of these three methods, I came up with the three different gross values in Hong Kong dollars, convert to U.S., apply 10 per cent.

Q And then, you averaged at the bottom at $65,000,000 on that particular method?

A Right. Out of--

MR. MUNSON: Objection, Your Honor; leading.

THE COURT: Sustained.

MR. CHASE: Okay.

Q (by Mr. Chase) What's the 65,000,000?

A Out of all these numbers, basically it does come down to the 65 for this method. In other words, if you take 71, 65, and 60, divide by 3, it's 65.

Q All right. Now, briefly explain the other two methods that are shown on that page and then we're going to back up a little bit and see how we get here.

A Okay. It's the same general methodology. In other words, the 10 year projection, and then discounting to the present time. However, we're using a different income stream. If you'll notice the second method is based on the change in cash. In other words, after determining this funding surplus and requirement, then going through the process of incurring debt, putting equity in, repaying the debt, and coming down to a net net cash--in other words, as we said before, the bottom line; in other words, that's the cash in your pocket--then, we add to that still the residual value because over the 10 year operation, we'll generate either a cash deficit or a cash gain each year after paying off debt and everything else. At the end of the day, we'll have the ending cash. And so, we have that on an annual basis and it's that stream of annual cash changes plus the residual that we discount back to the present time.

Now, we use slightly different discount rates here because we're discounting equity rather than equity and debt. In other words, overall investment. So, it's a slightly different discount rate, but we go through the same process generating Hong Kong dollars, convert to U.S., apply at 10 per cent.

Q Okay. And, please, explain briefly the third method that you've used?

A Well, before we lose this one--

Q Sure?

A The 62 is again the average of the three approaches.

Now, the third method is similar to the second where we're looking at ending cash, but the ending cash includes the investment. And so, we're looking at a 10 year residual value--in other words, operating income in the last year times 10--and then the cumulative cash that we have in the bank on the last day. And, we again apply our discount rates to that, come up with our Hong Kong dollars, convert to U.S., and take 10 per cent for UIH. The average of those three is 74.

Q What happens when you average the three methods? What do you come up with?

A Well, then we take the 65, the 62, and the 74, add them together, divide by 3, and we have 67.

Q That's where your 67 is?

A Right.

Q Okay. Now, what I want to do is this. You did more detail on that than I was going to have you do. So, I want to go back to how you get to this, but I want you to just give us a general summary using some of the backup work as to how this happens without going through specific line items. Is that all right?

A Yes.

Q I guess, it's okay. All right. Let me start you with Exhibit 1644. I'll tell you what; we can keep this one handy if you need to refer back to it. Sometimes, we get a little--kind of make a pun here; bored.

A Okay.

Q All right. Now, starting here, explain what all this means without going into terrific detail and explain how it relates to 1621, please?

A Okay. We've talked about this schedule before, if you recall, where we talked about the revenues, expenses, and our infamous EBITDA or the operating income. So, that really starts us off and gets us to the place where we can determine what this operating income is or the EBITDA. If you recall, back on this exhibit, Exhibit 1621, in each one of these, one of the key elements in the discounted value is the residual value. And, we said it was 10 times the last year's operating income. And, that number on here comes all the way down here. And, we've labeled it as residual value in Year 10. And so, over here in the 10th year, we've gone through all this exercise up here to determine the operating income. We've looked at the revenue, we've looked at the expenses, and we get our operating income. Then, we multiply the last year's operating income by 10 and we get 20,000,000,000 Hong Kong dollars. Again, with the model that I just talked about, we discount all that back to the present time, but the point of this exercise is to show in the 10th year what that residual value would be.

Q Okay. Let me--oh.

A One more thing with this. This bottom line here is the net income after tax. And, we've gone through the whole process of the revenues, expenses, and the other deductions that get us to taxable income and then the income tax, and then coming down to net income after tax. The reason I mention that is because it appears on the next schedule. And, when I mention it, I just want you to know where it comes from.

Q All right. On to the next schedule--that's my cue -- 1643.

A Yeah, we need to keep that one out?

Q Yeah, we need to keep that one out.

A Okay. This is another schedule we talked about briefly. I'd point out that we have this net income after tax. That was from the preceding schedule. It's the result of the--again, the revenues, expenses, depreciation, income tax, those things that generate net income. And then, we talked about adding back certain things such as depreciation, adding decoder deposits, that sort of thing. So, we come to our source of funds. We talked about the application of funds to capital expenditures, any acquisitions of other capital expenditures that we would make, and then we basically take the total available funds minus funds that we send out and we have either a net requirement or a net surplus. And, in Method #1 on this Exhibit 1621, you'll recall I said that we took the present value of the funding surplus and the residual value. We've talked about how we computed the residual value with our operating income and now we have our funding surplus line across here. We apply the discount rate to that and pull all these numbers back and we have a number. That number with the present value of the residual value gives us these values on the schedule.

Q Okay. Now, let me--are you done with this schedule?

A Not yet.

Q All right. Sorry.

A If you'll recall in the next two methods, it talks about the change in cash and the ending cash. I don't know if you can--can you see those again, the changing cash and the ending cash? Those numbers will come out of this line right here. Because after we've determined the funding surplus or requirement, we then look at how it's financed--with equity, loans, whatever--how those come in, how the loan is paid off,

and at the end of the day, what do we have in cash? And, that's this line right here. We're saying in Year 1, we have zero. And, basically, we have nearly zero for several years because all of our money is going into investment. Then, we start getting some surplus, and you'll see the line start getting bigger and bigger.

Q Does this track those line graphs that you were showing us earlier?

A Yes.

Q Okay.

A Then, you'll see one of the methods talks about ending cash in Year 10. That's down here, the last number. It's a cumulative cash. One of the methods looks at the annual change in cash. The other method looks at the cumulative ending cash. What do you have at the end of the day? So, those are really the two summary schedules that feed into this schedule right here.

Q All right. Now, briefly, there's one other ingredient I want you to talk about with that schedule and that's the discount rate. We had how you build a discount rate and we hit generally on that. Now, if you could generally describe to us what you did here in terms of how you built the discount rate for this computation, please? This is Exhibit 1643.

A As you recall earlier, I indicated in the discount rate--we took the risk-free rate, we added onto it financial risk, and business risk and that came up with our discount rate. This is just a numerical representation of that. We used a consistent risk-free equity return which again is a return on a long-term Treasury bill or Government bond. So, we kept that consistent across the three different methods. There's no magic to using

the three. It's just for good appraisal practice. You always like to use more than one method. If you use just one, then you're really limited to that very single number. You can use 1 and then say, well, it's plus or minus, but that's not really the best way to do it. The best way to do it is to actually use three methods. That gives you a much better feel and understanding about what's happening.

So, we started, as indicated before, with a risk-free rate. Then, we added to it an equity risk premium which I talked about before. It basically is the risk of using a private equity instrument rather than just a Government note or a Government bill. So, once you get into the private equity market, there is a higher return or risk that goes along with it. Now, in this item, I also included business risk, as well, and increased it by 1 per cent each year just as a sensitivity to demonstrate what I thought was a reasonable range of change in that equity risk premium. So, I think it's a reasonable change. I think it recognizes some difference and that's where the variable is.

Now, beta, that's right up there with EBITDA. The beta basically recognizes stocks variation which is either greater or less than the market's variation. In other words, overall, the market will vary a certain amount in terms of its stock prices and returns. Now, particular industries may vary more or less. Their stocks may be or less volatile, so to speak. And so, there's a long convoluted way of computing a beta, but basically the beta that we computed was 1.25. That's saying for cable television stocks that were in our database and that we used to compute this, they vary in terms of value and return 25 per cent more than the normal market, the overall market. So, you take the risk-free rate, add to it that equity risk premium, and apply the beta and we have the pre-tax equity return which is used in one of--actually, we use an after-tax equity return and then we do a weighted average return, as well.

Keep going on this?

Q Okay. Well, you know, we don't have to get into excruciating detail, but if you could just explain generally why you have the rest of it there?

A Okay. The rest of it--well, we have the tax rate. The 17-1/2 per cent tax rate is the profits tax in Hong Kong. So, by applying that to our pre-tax equity rate, we end up with an after-tax equity return. Now, that's applied in the second method here because we're dealing with equity in that return.

Now, we then have to look at debt because not all of this is going to be financed with equity. Part of it will be debt. So, we have to look at what will be the weighted average return when part of it is equity and part is debt. So, if we have an equity return over here and we have a debt return--and by definition, the debt return is interest--then, we have an interest rate and we have an equity return. So, when we say a weighted average return--say, if we use a 50/50 debt and equity which is what we did use, then we would take the equity return times 50 per cent, the debt return or the debt interest times 50 per cent, add those results together, and we would have a combined weighted average return or weighted average cost of funds. So, that way, we take into account the equity on one side and the debt on the other to show what that cost of funds would be.

And, that's what we've done here. We took our interest rate, worked our way down, and you'll see these three discount rates are used in the first and the third methods here.

Q Okay. Mr. Jones, let me ask you to return to--are you done with this part of it?

A Yes.

Q Okay. Now, the next thing we're going to ask you is how a baseband decoder works. Mr. Jones, what you just went through in terms of the valuation, is there anything different about that than what you've done in the several hundred valuations you do in your ordinary business?

A No. Sometimes, we don't go through the whole exercise. I mean, we do this everyday, valuations. So, we know what the risk-free rate is. We know, you know, what the risk premiums are and the betas and what the market is actually paying or expecting in terms of returns. So, it's not unusual that we would use certain discount rates without specifically going through the beta computation or the equity risk premium calculation for every valuation we do. But, it's the same discount rate, the same methodology, the same approach in all of them.

Q Okay. Now, you also did a valuation as of October 1992; is that right?

A Yes.

Q Now, your opinion there was that the lost value to UIH was $50 million, is that right?

A That's right.

Q All right. The bad news is I'm going to ask you a couple of questions about that. The good news is we're not going to talk through the whole methodology. I'm going to ask you generally did you apply the same general methodology to the October '92 that you used in March '94?

A Had the same general methodology with a couple of changes.

Q What were the variations that you used in October '92 as opposed to March '94?

A Well, in '92, if you recall, we did the weighted average thing with the 50/50 debt/equity. In '92, being earlier in the game with some additional risk associated with it, we used only a 40 per cent debt and 60 per cent equity. So, we used a different debt/equity ratio. Also, after computing the total value in Hong Kong dollars, but basically in computing the total value, I reduced it by 15 per cent to recognize certain additional risk and uncertainties at that time being right after the franchise, a long ways from having a system built, and some uncertainties associated at that time. So, I reduced it by 15 per cent to take into account my opinion of what that factor would be.

Q And, that's what accounts for the 50 million as opposed to the 67 million in the March computation, those items you just mentioned?

A Well, that's part of it. I mean, we're using a different business plan and a different set of projections. So, those would affect it, as well. But, clearly, reducing it by 15 per cent would make a significant difference to it.

Q The business plan you were using for the '92 projections, that's what went with the bid?

A Yes.

MR. CHASE: Okay. Now, I'd like to just move the admission of Exhibits 1621, 45, 46, and 47. These four exhibits parallel the four that we looked at on the March computation, but these are the October computation and I'd just like to move the admission into evidence.

THE WITNESS: I think you mean 1622 instead of 1621.

MR. CHASE: 1622, 45, 46, and 47.

THE COURT: Do you have the same objections?

MR. MUNSON: Yes, sir.

THE COURT: They're overruled. Thank you.

(Trial Exhibits 1622, 1645, 1646, and 1647 were received in evidence.)

MR. CHASE: Okay. And, if Ms. Hutchinson will distribute these, as well. I'm just going to put one of these up on the board and just--

(Pause.)

Q (by Mr. Chase) Do you have 1622 in front of you?

A Yes.

Q Okay. Generally, just tell us, please, what is reflected on Exhibit 1622 and that's--I don't think you need to come to the board, but this is the counterpart to the summary you had from March '94.

A Exhibit 1622 indicates the loss in value of UIH's share of the business as of October 1992.

Q All right. And, you used the same three methods?

A Yes, the same methods again except for the 15 per cent adjustment.

Q And then, you averaged the averages?

A Yes.

Q And, you came out with?

A 50 million.

Q Okay. UIH's share?

A Yes.

Q Now, let's talk about--before we go on to your other opinions, I want to talk about the idea of risk for a few minutes because that's something that you've mentioned on various occasions. First of all, summarize for us for a moment--and then we'll go forward--how risk is factored into your computation?

A In a lot of different respects--

Q How was it factored in in this case?

A Again, it was factored in pretty much from the beginning in the assessment of the input to the models to determine if I felt those were too aggressive, too much risk, should be adjusted, something like that. So, in considering the elements in the projections, risk is considered at that point. Then, even through the whole process that we talked about earlier in determining a terminal value in that last year, we have to look at the multiple that's applied. We take into consideration risk that we feel might be appropriate at that time and that will affect where in that range of acceptable multiples we select a multiple. Then, the risk obviously is contained in the equity risk premium and the discount factor and in the reflection of the beta. In other words, how the cable industry stocks vary

compare to the overall market. So, really, risk is taken into account at each stage of the game. Any particular business risk are either reflected in changes or considerations in the projections or as an added amount in the discount rate.

Q Was that done by you in this case?

A There was--I increased the business risk by one point in the discount and all those other risks were taken into account in this case.

Q All right. Now, I want to talk about some specific risks. First of all, did you view the Hong Kong project as a startup business?

A Yes and no.

Q Okay. I'm going to ask what you mean by yes and no. In fact, I will ask what you mean by that. What do you mean by yes and no?

A Okay. Sorry, I'm not being coy; that's true.

Q That's all right.

A Okay. Yes, it was a startup. There was not a cable system there and they were building a cable system where there was none before. So, it was a startup business. On the other hand, cable television is not a new and unproven technology nor the approach or the methodology. It was not unique or, you know, newly created. So, the industry, the approach, the business plan was not new. On the other hand, you know, as far as there being business there or not, yeah, it was a startup.

Q Okay. And, you've valued, I believe you testified, about at least 25 per cent of your previous appraisals has been beginning cable businesses?

A Yeah. Again, I don't know the exact percent, but that's an order of magnitude that we've done about that percentage of new or startup systems.

Q And, do you view those generally with the same yes and no kind of answer?

MR. MUNSON: Objection, Your Honor; lack of foundation.

THE COURT: Sustained.

MR. MUNSON: And, I don't understand the question.

Q (by Mr. Chase) Do you approach those any differently than you approached this one here?

A No, I view them pretty much in the same manner.

Q All right. Now, I'd like you to look at Exhibit 1641 in front of you, please? Do you have 1641 in front of you?

A Yes.

Q Now, this is a bullet pointed summary of some of the things you just said. Would using this help illustrate your testimony?

A Yes. These are the things we're talking about.

MR. CHASE: Your Honor, I'd like to use 1641 just for illustrative purposes at this point.

THE COURT: All right.

MR. CHASE: Thank you.

MR. MUNSON: I'm sorry, did you move it--

MR. CHASE: I'm not moving its admission. We're just going to talk about it.

Q (by Mr. Chase) Do you want to come back? I'm talking to you, Mr. Jones.

A Oh. I thought you were talking to Mr. Munson.

Q I don't want him over here under any circumstances.

1641 is a bullet pointed summary. Could you explain what that involves, please?

A Well, these are some of the risks that I think needed to be considered with the Hong Kong cable project because they are considerations and there is risk in those areas. There's always a risk consideration with technology. For the particular system in Hong Kong, the technology that was being proposed was proven and had been demonstrated in other cable companies around the world. So, technology was not considered to be a significant business risk. Certainly, it's something that has to be watched and considered and diligently dealt with, but nevertheless it was an item that I thought was quite manageable and not a significant risk.

We've talked about the positives of the Hong Kong market and one of those again was the demographics. There's risk associated with generating the kind of subscriber penetration and getting the receptivity to subscriber rates. And, the demographics are a big factor in whether those risks are

adequately dealt with. In this case, we have good income levels, lots of entertainment demands, lots of VCRs, good demographic indicators of receptivity, and a good likelihood of subscriber penetration. So, the good demographics of Hong Kong, I think, we're enough to deal with the risk of penetration and rates and lead me to believe that what was in the projections was reasonable and achievable.

Similar systems, there are other large systems around the world--in London, New York--that have high density areas. No system is just alike. There's no system like Hong Kong, just like Hong Kong; there's none just like New York. But, on the other hand, there are other examples where large projects like this were completed. Large cable projects were built and completed. They provided the same kinds of services. They had--some of them had significant amounts of programming which was being proposed in Hong Kong. So, there are similar systems that give us good indicators. Now, again, not to the point that we would necessary use them as comparable systems. I mean, you can't copy it. But, on the other hand, they give us a good indication of how it would operate.

Then, the operations, a proven methodology. Again, construction is always a little uncertain. Again, you use technology that's proven. That helps overcome that. As far as how you organize a cable television business, that's been done thousands of times. You have your customer service group. You have your marketing group. You have the finance and accounting group. There's lots of experience in that area. And so, the methodology of how you do these cable systems is not a mystery. There's always risk and there's some uncertainties going forward. But, on the other hand, it's been done many, many times. Not easy, but it's been done many times.

Also, this is not a venture capital deal. We have a strong partner in Wharf that has a good recognition domestically,

good financial capability. Had a good partner in UIH as far as their ability to participate as a shareholder and also to participate up in the operations. So, this was not a venture capital deal where we were going to get people all over the world to invest on some new project. It was a venture that had been worked on by Wharf for many years and it's a long-term project. So, I didn't view it as a venture capital deal. So, I didn't see that there were any significant risks in that area.

Q Okay. Now, I want to ask you--you may as well stay right where you are because I'm going to ask you whether you reviewed the narrative portion of the Wharf Cable financing memorandum.

A Yes.

Q And, did you review in there the financing considerations and risks that Wharf itemized?

A In the financing memorandum?

Q Right?

A Yes.

Q Now, I have here Exhibit 1235 which is from the Wharf Cable financing memorandum executive summary. The executive summary is in evidence. This represents abbreviated points from the financing memorandum itself. Have you reviewed this?

A Yes.

Q Okay. Now, this is straight out of a document that's already in evidence, Your Honor, and that's the executive

summary of the financing memorandum. So, I don't know that it's necessary that I do anything further on this.

Okay. let me take you through this a little bit. Now, this is prepared by Wharf. And, the lead in, "In summary, Wharf Cable believes the project to be a sound investment with both the terms of the cable tv franchise and the unique nature of Hong Kong's environment favoring high penetration rate at relatively low cost. While there are risks to be considered, Wharf Cable's business plan has been carefully designed over a long period of time to mitigate and minimize these risks which are comfortably outweighed by the project's many strengths."

Now, I'm going to ask you about the various points that follow here. This is taken straight from the executive summary of the financing memorandum.

A Right.

Q That's the one modestly referred to as strengths. Okay?

MR. MUNSON: Does Mr. Chase have a question to ask here or is he just reading the document?

MR. CHASE: I'm asking a question about each one of these.

THE COURT: Go ahead?

Q (by Mr. Chase) Now, in this particular one, there's three bullet points referring to strengths of market capitalization, low group leverage, and committed to cable tv. Do you see that?

A Yes.

Q Did you take that into account in your assessment of risk in this particular project?

MR. MUNSON: Objection, Your Honor; leading.

THE COURT: Overruled.

THE WITNESS: Yes, I took it into consideration. I actually used the information in the analysis.

Q (by Mr. Chase) Okay. And, just generally, what does all this mean, if you can explain--

A Well, first of all, it means Wharf is very financially capable. The second one gets us back to that debt/equity thing again. It says "low group leverage". It basically means that Wharf has really very little debt and has a lot of capacity to borrow money or use its equity to invest. So, it has a low leverage. And then, "committed to the project since '88", it's just as we indicated. They had been working on the HKCC back in '89 and stayed with it.

Q Okay. Let me flip over the page. Now, these are supposedly the strengths of the project. If you disagree with any of these strengths, you let me know. The next one is a strength listed by Wharf is "conservative project leverage, plan to finance"; this sounds similar to what you were just talking about.

A Well, this is back to the--not the existing condition of Wharf, but is the projection. In other words, in the projection, the business plan indicates that no more than 50 per cent of the money that goes in will be in the form of debt and that's what we showed in our weighted average debt/equity for our discount rate. So, it's a pretty conservative debt percentage.

Q Did you agree that that was a strength of the project?

A Yes.

Q The next one if "favorable regulatory environment". Did you agree that that was a strength of the project?

A Yes.

Q And, can you explain these four bullets relating to the regulatory environment and how that affects the risk or the strength of a project?

A Well, basically, they had a three year exclusivity in which they were the only video company that could provide Cantonese programming. Cantonese is what people wanted. So, they had an exclusivity during that period. They had a territory-wide franchise. In other words, the Government didn't decide given the size of the franchise to split it up into two or three different franchises and give it to different parties and let them have the north part or the south or whatever. They have a territory-wide franchise which leads to some economies going forward and opportunity to advertise and deal with the whole market. No subscription rate regulation after January '95. Another way to say it is deregulation. Operators like that. So, that's a plus. And, the other regulations were not restrictive, as well. So, it's important for the operator, if the regulatory environment is favorable, because it's easier for them to--it's more predictable going forward. It gives them a lot more flexibility and it eliminates a lot of the uncertainty.

Q Okay.

A So, it's a positive.

Q The next strength listed by Wharf is good demographics and it has three bullet points there. Now, I take it from your testimony, so far, you would agree with this bullet point, this particular strength. Is that right?

MR. MUNSON: Objection, Your Honor; leading.

MR. CHASE: All right.

Q (by Mr. Chase) Why don't you tell me whether you agree with it?

A Yes. I agree with it and we've actually talked about it before already about the whole economy having a strong economic growth reflected in a good household income, the highest in the region, and the ability to spend on leisure and entertainment services. Again, over 70 per cent of them had VCRS which is, you know, as good as it was in the U.S. at that time. So the good demographics is clearly a strength.

Q All right. Let me flip you over to the next one, which is the limited competition. It has three bullet points under that. Tell me whether you agree with this as a strength, and if so, why.

A Yes, it's a strength because we talked about earlier in various U.S. communities, like in Los Angeles, if that's a comparison. But anyway, there's 18 off air--

Q Wait a minute.

A --signal.

Q Did you refer to Los Angeles as a community? Okay.

A A large group of houses. They have, you know, 18, at least, off-air signals, and it depends on, you know, your antenna, whether you could even get more. And every community, even a small rural community in the U.S. has the three networks, Fox and PBS, sometimes even an independent or more.

So as a minimum we have five in the U.S., even in a small rural. Here we're saying we have a community of five-and-a-half million people that essentially have two television stations. So there's a lot of room to provide programming that people--that will fill people's needs.

Star T.V. was a satellite television service, and they did not provide programming in Cantonese, and so as a result, not attractive to most of the people in Hong Kong.

Also, they had a long-term strategic agreement with Star to provide programming going forward in terms of movies and premium services and eventually to provide some Cantonese. But they had dealt with their potential competition by a long term agreement.

So by dealing with the competition, it's just a strength that puts them in a good position.

Q Okay. The next one listed by Wharf is Low Network Construction Costs, and it has three bullets under there. Did you believe that was a strength, and if so, why; if not, why not?

A Yeah, I indicated earlier that the density is very high. There's a lot of multiple dwelling units, tall buildings. The living quarters are right downtown. On the first few floors are offices, the top floors; some of the buildings are residential. Some residential buildings right on the same block are high rises and look like the rest of them.

So there's a lot of high rise construction building living quarters right in the small area, so it minimizes the cost per unit. I mean, it's expensive to build. No doubt about it, it's expensive to build in a large urban area like this. But when you have such high density, you divide that up by the number of units, and it--and it minimizes the cost.

Q Do you know offhand the comparative wiring cost of a U.S. home? Seventy dollars in Hong Kong; how much for a U.S. home? Do you know offhand?

A Well, for--per home, it's about $150 to $250, and then per subscriber, it depends on what the penetration is. It could be 300 to 500 per subscriber.

Q Okay. Anything further on this particular strength?

A No.

Q Okay. Wharf listed as a strength Limitless Opportunities for Revenue Growth. Did you view this also to be a strength? If so, why; and if not, why not?

A Yeah, I thought it was a strength. I agreed with the financing memorandum that Wharf put together on this and recognized that these aren't really reflected in the projections. There's nothing in the projections to show what the potential revenues would be from interactive services or home banking, video on demand, things like that, that this fiberoptic network can provide.

Back in '92, we were not talking as much about the Internet as we are now. If we were doing this application today, we would fill it with Internet things.

So the whole area of interactive services is not really reflected in the projections in terms of revenues. Obviously, there would be some cost for terminal units and things like that, but you've got the basic fiberoptic network, and so you're capable of providing really significant interactive services.

Telephone was considered. It was not included in the application, and that's, again, two sides to look at there; one the revenue side, the other the cost side. But on the other hand, we're building a sophisticated fiberoptic network, so we've got the backbone or the trunk for it. So how that's handled application wise, ownership wise, everything was not really presented in the application.

Then the big one is just potential for cross border expansion into China. There's a mass of people right beside Hong Kong. Hong Kong is about five-and-a-half million. Just north of it is Kwang Tung Province, which has about 60 million people. And then you can fan out from that and meet millions more. And so there was a huge potential for services going on into China, and, you know, none of that is recognized in the projections.

Q So you're--when you say not recognized in the projections, why do you conclude it's a strength then?

A Because there's a tremendous amount of potential for the programming that's going to be generated, having relationships with the authorities in the Kwang Tung Province to extend the plan on out and make it more like a regional system; if you get into telephones, and obviously you want a big area. So the potential of tying into that group was significant.

Q Okay. Now, let's look at some of the risks and mitigating factors that Wharf outlines, which is under the title of Risk and Mitigating Factors. And the first one they mention is China in

1997. It has two bullets under that. Now, did you view this to be a risk, and did you view this to be a mitigating factor? And if so, why?

A Definitely a risk. Nobody would deny that. It was an uncertainty at that time, and from all I could gather in the application, Wharf had done whatever they could to mitigate it; mitigate meaning to minimize the effect of that risk.

Wharf was a big player in the area. They had strong relations with China. They had invested in China and had working relationships in China, and they were there. They were players.

So there was no indication that Wharf was stressed over the China takeover in 1997. Also, there's a signed agreement between China and Great Britain on what the terms would be of this change, and even beyond that, the franchise that--the cable television franchise that had been awarded to Wharf was one of those contracts that the joint board, joint group, signed and approved because that was one of the conditions. Any new contract of this type--not just communications, but any large contract like this, would have to be approved by this new joint China/Hong Kong liaison group.

And the cable television franchise in particular was signed off and agreed to by this group. So there's every expectation that they would comply with that franchise going forward.

So I thought they did all they could do minimize this risk.

Q Did you take the risk into account?

A Yes.

Q And do you believe you adequately accounted for?

A Yes.

Q Why don't you let us know if you're getting tired here.

All right. Project Size and Time Scale too Challenging, and then Wharf lists some of the mitigating factors. Now, did you agree or disagree that this was a possible risk, and did you agree or disagree with these mitigating factors?

A I agree that it was a risk because it is a big project. I mean, 1.6 million homes is a lot to deal with. And so it's a risk. A challenge is another way to put it, perhaps. But Wharf had been at this diligently since 1988, and again, I agree with the things that the financing memorandum spelled out. They had very detailed plans, very precise plans. They had done all of their homework as far as assembling a good management team, setting up contracts with vendors, and had done whatever you could do to launch the plan. They had even figured a way to get programming in people's homes as soon as possible, and they did that by using MMDS, or the wireless cable, as an initial approach to providing video services. In other words, the video service would be beamed out over this microwave service, and people could receive it right away. I mean, if they're in the area, they would have access to it.

In the meantime, the more sophisticated fiberoptic plant would be built. Then there would be a shift over to the new fiberoptic plant.

So, you know, they recognized this is a big challenge and a big system, and I think they took, you know, whatever steps they could to mitigate the risk.

Q Okay. And the next one would be a risk, which is Subscription Fee may not be Acceptable. Population Uses Free

T.V. Did you take that into account? Did you agree with it, disagree with it, and how did it factor into your computation?

A Yes, I think it's a factor. I took it into consideration. It's a consideration anytime you go into a new market where they've been receiving T.V. for free. On the other hand, they were receiving only two channels of programming. They were not receiving the kinds of movie channels or sports channels, news channels, entertainment channels that they would be receiving. And, you know, elsewhere around the world we found that once that is provided to them, there's a receptivity to it.

The indications are that they have good disposable income. They buy lots of things. And besides that, detailed market research was done that showed they wanted cable television.

So it's always a risk. It's a bit of an uncertainty just what that ultimate penetration would be, but that's why you look at all the demographic factors, do the market research, do all your homework and cover all the bases. And I think they did.

MR. CHASE: Your Honor, it's probably a little early for the break, but Mr. Jones has been going now for an hour and 45 minutes. I think if I could recommend an early break?

THE COURT: All right. Okay. We'll take a break now.

(3:00 p.m. - Jury excused.)

(3:00 p.m. - Recess accordingly.)

(At 3:25 p.m. on April 7, 1997, with counsel for the parties present, the following proceedings were had:)

(3:25 p.m. - Jury present.)

MR. CHASE: Mr. Jones, if you could come back, we have a few more of these to deal with.

DIRECT EXAMINATION BY MR. CHASE RESUMES:

Q Now, I'm going to--this was a--considered a risk and a mitigating factor in Wharf in their financing memo, "Dominant existing operator created one channel market,"and then they have these various mitigating factors. Did you agree or disagree with Wharf's conclusions there?

A I agree with those conclusions.

Q Is this something that you--that you, yourself, had knowledge of?

A Yeah, we knew of TVB's dominance in the market. I think we even mentioned before that was even a plus that there were only two T.V. stations. Here it's considered a risk and then mitigated that only that it's dominated by one channel. There's a lot of indication that people want and need additional programming. We talked about movies, sports, entertainment, whatever. And probably one thing, that this indicates the declining broadcast viewership in the U.S. When cable came along, there was a decline in broadcast viewership as well. I think it's down to 65--60 or 65 per cent now, the rest being cable. So people like cable services.

Also, the intent of Wharf was not to muscle in on TVB and move them out and take their customers necessarily. Wharf is providing a different kind of programming than TVB because TVB is providing it to a mass market. And that was not the intent of Wharf. So there were a lot of additional programming opportunities that they had.

So the fact that it's dominated by one channel, it's the fact that there were two there, and this is the strongest one.

Q Okay. Now, let met go to--subject, Programming, the next risk factor listed by Wharf. Together with the mitigating factors is the Cost Risk of Self-Programming approach, and then Wharf says how it mitigates that risk. Did you agree with this, disagree with it? If so, why?

A Yes, I agree that it's a reasonable attempt to mitigate the risk of self-programming. Self-programming is more expensive than just taking programming off of the satellite. When you start creating your own programming, it's--it is more costly. On the other hand, you have to figure out ways to minimize the effect of that on your operations.

They chose to try to focus on live programming where you don't have to have lots of production time for that. A lot of that is discussions or sports or various things like that that you can do real time.

Commissioned programming is programming that they would buy from local production studios that would do maybe documentaries or things like that, and it's done locally and then in effect sold to Wharf, or it can be originally commissioned by Wharf, and it's one on their behalf. Frequently with programming like that, you can get a lot of repeat usage of that, and you get a good cost benefit from it.

So programming on your own, again, is more expensive than taking it by satellite or off air, but, you know, steps have to be taken to minimize that.

They were not intending to be a duplicate of TVB or to be, you know, another dominant television station. They were

basically a complimentary service to TVB and made an attempt to minimize their cost.

So, you know, it's a reasonable approach to minimizing the programming cost.

Q Okay. We're coming to the end of these. The next risk factor they list is a Star Performer Locked up by Existing Stations, and then they have their ways that they believe this risk is mitigated. Did you agree or disagree with that, and if so, why?

A I took it into consideration, and I agree with it. Did not pursue it in terms of a lot of interviews, surveys, or whatever. I think from the experience that we've had in other cable systems around the world that do their own programming, for the kinds of programming we're talking about doing here, there's not a shortage of available talent. And Hong Kong is a large market with a lot of entertainment activity and a lot of acting and performing people.

So I don't think there would be a shortage of people for the kinds of programming that we're talking about doing with Wharf.

And as far as locking up the stars, the stars want--the stars want the free agents, I really didn't pursue that. I don't--I don't think that there would be a problem of having an adequate number and availability of people to provide the kind of programming we're talking about.

Q Okay. And then finally Wharf listed as a risk factor Test of Service, and it talks about how it would mitigate that. Did you disagree--did you agree or disagree with this, and if so, why?

A No, I agree with it, and there was a lot of discussion and activity by Wharf in selecting the equipment that they used. And Jerrold is a U.S. cable equipment manufacturer. Their primary office, their headquarters, is in Pennsylvania, near Philadelphia, Hatboro, Pennsylvania. And they are pioneers in the cable television industry. They've been around from the beginning, probably 40 years, and they are known to be able to provide good quality equipment and adequate quantities. They can manufacture, you know, in the quantities that are needed. And the Jerrold decoders are used throughout the world and are proven to be secure.

Q Okay. Now, I'm going to ask you a couple more questions about these, but you can actually return to your perch.

We talked a little bit about China and the fact of 1997 and the change of sovereignty. I want to ask two different kinds of questions with respect to China.

First of all, you talked about the way Wharf discussed how that risk is mitigated. In your view, are there any other ways that would mitigate or offset or neutralize that risk?

A Well, it's really an expansion of what those items were. In the agreements, there's an agreement that the currency will remain stable.

Q This is the agreement between China and Great Britain?

A Right.

Q All right.

A Also, there's, again, significant interrelationships between not only Wharf, but other companies in Hong Kong, with China. There's a strong desire by China to trade, and they need

a window of opportunity for that. Hong Kong is an excellent opportunity for that, and indicators are that companies have continued to invest in Hong Kong in light of, you know, the opportunities that are there.

Q Okay. Now, let me ask you about one other thing that was mentioned there. I want to get some clarification.

You said that one of the strengths of this project was the possibility of other kind of services that could be sold, Pay-Per-View, Interactive, and other kinds of opportunities, like taking Hong Kong into China and those kinds of things. Do you remember that?

A Yes.

Q All right. Now, I just want to make this clear. Now, in your opinion about the value that was lost to UIH as of March, '94, and October, '92, did you take into account the possible additional revenue that may be gained off those sources?

A No, none of those revenues are reflected in the projections. The closest I would have taken that into consideration is when I was determining the terminal value, and I indicated a range of 8 to 13. Indicated there was some potential additional revenue, but that revenue basically--I was talking about the added revenue for interactive services and whatever in Hong Kong. None of those revenues are reflected in--none of the revenues that you would generate in China are reflected in the projections or in the multiples or discount rates.

Q What about revenues on these additional services? Are those in the projections?

A No.

Q And so these would be in addition to whatever's in the projections?

A Yes.

Q Okay. Now, let me ask you some general questions about things that you may or may not have taken into account in doing your valuation.

First of all, are you familiar with the idea of a

APPENDIX EH

Excerpt from Cross-Examination of R. Jones

April 8, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 8446:01-8448:06; Transcript 6227:01-6229:06)

Excerpt from Cross-Examination of R. Jones

April 8, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 8446:01-8448:06; Transcript 6227:01-6229:06)

Q (by Mr. Munson) Mr. Jones, let's do this. I'm going to change topics here and switch over from the work you did on valuing the alleged work that UIH did to the work you did on valuing UIH's alleged option or ownership interest. You remember that you did some work in that area as well?

A Yes.

Q Now, you were aware that in this case UIH alleges an option to buy ten per cent of Wharf Cable; correct?

A I don't know if it's those exact words. I recall--

Q Well, do you recall--

A Again, I recall reading the--the Complaint and saw what it said in there.

Q Well, let's look at Tab 65 which is a copy of a part of the Amended Complaint. Do you have that in front of you?

A Yes.

Q Turn to the second page of that document, at paragraph 54. And paragraph 54 sub (1) of the Complaint alleges UIH had the

option, but not the obligation, to purchase either directly or through UIH-Asia at least ten per cent of the capital stock of CNCL; do you see that?

A Yes.

Q Now, when you did your calculations in this case, you knew that UIH was claiming in this case that it had an option to invest; correct?

A I had read this Complaint, so I knew they were alleging that.

Q Now, what you valued, though was not the value of an option to buy ten per cent, instead you valued the ten per cent ownership; did you not?

A I valued a ten per cent economic interest of CNCL.

Q Exactly. So what you didn't value was an option to buy a ten per cent interest; correct?

A I valued the option as equivalent to the ownership interest.

Q So, again, what you didn't value was an option to buy ten per cent; correct?

MR. CHASE: I'll object, Your Honor. He just answered the question.

THE COURT: Overruled.

The Witness: Not--not--well, again, I'll just have to restate it. I valued the option as equivalent--as--as equivalent of the ten per cent economic interest of CNCL.

Q (by Mr. Munson) Well, let me see if I can understand. You valued--what you did was to value a ten per cent ownership interest in the cable company; right?

A Yes.

Q Right? Okay. What you didn't do--

A Well, the equivalent of a ten per cent ownership interest.

Q Value of the equivalent of a ten per cent ownership interest. What you did not do was to separately value an option to acquire a ten per cent ownership interest; correct?

A I guess I didn't interpret it as--in quite that way. I--I was asked to, again, determine the ten per cent economic value of CNCL, understanding what was claimed in the Complaint.

APPENDIX EI

Excerpt from Direct Examination of F. Bateson

April 17, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 9695; Transcript 7476)

Excerpt from Direct Examination of F. Bateson

April 17, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 9695; Transcript 7476)

were involved with the Fortress Satellite Services purchase negotiations, was anyone from UIH involved?

A Well--

Q In the negotiations?

A Yes. Obviously, the engineering team which included Blake Williams was involved, but whether he was a Wharf Cable employee or UIH employee--I mean, I don't know what his contract was.

Q Let's go to Point 4 and maybe we can even group in Point 5. Point 4 is meetings with the Recreation & Culture Branch and 5 is meetings with the Office of Telecommunications Authority.

A Yes.

Q What were those two things about and what was your involvement?

A Okay. The government, because of the problem that they had with the HKCC consortium that collapsed, they were paranoid that our consortium didn't and that we met the times

set and delivered on time. There were stringent penalty clauses in the license for that. One of their requirements was that we met with them on a monthly basis with RCB, the branch responsible for broadcasting, on a monthly basis to progress through what--for me to explain--or for our side to explain what we were doing to meet the launch which was the first problem or the first point. The second point was that

APPENDIX EJ

Excerpt from Direct Rebuttal of J. Bowles
April 17, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 9824-9832; Transcript 7605-7613)

Excerpt from Direct Rebuttal of J. Bowles
April 17, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 9824-9832; Transcript 7605-7613)

Joseph Bowles.

JOSEPH H. BOWLES

called as a rebuttal witness, having been first duly sworn, was examined and testified as follows:

THE CLERK: Please be seated. Please state your full name for the record and spell your last name.

THE WITNESS: My name is Joseph H. Bowles, B-O-W-L-E-S.

DIRECT EXAMINATION

BY MR. CHASE:

Q Mr. Bowles, could you pull the microphone a little bit closer to you? You're doing pretty good, but not perfect.

A I can try.

Q All right. Mr. Bowles, tell us what you do, please.

A I'm the managing director of Valu Quest Limited.

Q What is Valu Quest Limited?

A Valu Quest Limited is a national appraisal firm for regional offices. It was formed by four former partners of Ernst & Young. We put together a firm to specialize in the appraisal of businesses, business assets and intangible property.

Q Now, you said this is four former partners of Ernst & Young?

A That's correct.

Q What is Ernst & Young?

A Ernst & Young is an international accounting and consulting firm. It is the same firm that Mr. Carey belonged to.

Q Let's go right to that for a moment here. Were you a partner at Ernst & Young?

A I was a partner in its predecessor firm of Arthur Young & Company.

Q And then you were with Ernst & Young?

A I was a regional director of Ernst & Young running the north central region in valuation services.

Q Tell us generally what you do as a--as a business valuation expert.

A Basically, we are called upon to opine as to the value of business interest, securities, for a multitude of purposes; sometimes merger and acquisitions, sometimes for fairness, sometimes for IRS reporting, for the Securities and Exchange Commission in accommodating for initial public offerings.

Q Now, is that the kind of work that you did when you were with Arthur Young and then its successor, Ernst & Young?

A Yes, primarily.

Q So you're an appraiser?

A I am an appraiser.

Q And how long have you been an appraiser?

A I started appraising about 1970.

Q And is your area of specialty business appraisal?

A One of my areas of specialization is business appraisal.

Q And at the present time, I think you testified that's now smaller businesses you focus on?

A I appraise a lot of start-ups and initial public offerings at the present time.

Q All right. Let me--let me go back a little bit now. You said the early '70s is when you became an appraiser; is that right?

A That's correct.

Q And have you belonged to any appraisal societies or associations?

A Various ones. I was certified by the American Society of Appraisers in 1982 in business valuation. Previously I was certified in 1978 by the ASA as a senior member in the real estate. I was a member of the American Association of Cost

Engineers. I was a member of the American Society of Review Appraisers, and I've belonged to the American Arbitration Association in the past.

Q Have you ever spoken or taught in the area of appraisal?

A Yes, I've taught appraisal theory in the various courses taught by the American Society of Appraisers. I've taught courses 1, 2 and 4 of the four courses that were offered. I've taught for universities, Illinois State University and a college down in Texas. I've also taught for various organizations, the American--the AICPA and various state organizations, and I've taught continuing educational programs for various law firms in th area of valuation.

Q Have you ever written in the area of valuation?

A I've written several articles. In the last 10 years I wrote using strategic planning as a strategic defense in fraudulent conveyance, which had a valuation topic. For the American Society of Appraisers, I wrote a monograph called "A Quick Look at the Theory of Interest," which examined capitalization theory, use of interest rates and how the whole topic works.

Q Okay. Slow down a little bit. This stuff is hard enough when it's slow. It gets harder when it's fast. So slow down just a little bit, if you could.

A Oh, okay, I'm sorry.

Q Okay. Anything else that you've written on the area?

A I wrote articles on using certain types of measurement theory in valuation that were published by the American Society of Appraisers in their journals about 1981-'82. Generally, I try not to write a lot because every once in awhile,

I end up in court, and it's easier not to have a lot of things out there.

Q Now, you say you were with Ernst & Young, and that's the same company that Mr. Carey is now with, right?

A That's correct.

Q All right. Now, Ernst & Young, you were the head of the valuation group?

A I was the director of valuation for the north central region. My region included Ohio, Michigan, Kentucky, West Virginia, Virginia, Pennsylvania and Upstate New York.

Q What does the valuation group do?

A It's a specialty group that does nothing but valuation, business valuation and sometimes litigation support.

Q Did Ernst & Young, when you were there, use people other than appraisers in its--in its valuation group?

A No, the valuation group--although Ernst & Young is one of the world's largest accounting firms, the valuation group is made up entirely of appraisers.

Q To your knowledge, is that true with respect to the other large accounting firms?

A Yes.

MR. MUNSON: Objection, Your Honor. There's no foundation for this.

MR. CHASE: I'll lay a foundation.

THE COURT: All right.

Q (by Mr. Chase) Are you familiar with the practices of the other large accounting firms throughout the world?

A Yes, virtually all of us are members of the American Society of Appraisers and know each other well.

Q When you say us, do you mean the people in the valuation areas?

A In the valuation groups, yes. It's a big family.

Q All right. To your knowledge, do any of these other large accounting firms use people that just have CPAs?

MR. MUNSON: Objection, Your Honor. There's still no foundation.

THE COURT: Overruled.

THE WITNESS: In most cases, the people hired within the other firms have been business valuation and appraiser specifics. In fact, a lot of the people at the other firms are people I trained at Ernst & Young.

Q (by Mr. Chase) In the course of your career, roughly how many business appraisals have you done?

A Somewhere in the neighborhood of about 1,500.

Q Could you describe for us the nature--now, without doing all 1,500 and without being very specific, just generally the nature of the kind of matters you have and the kind of clients you do them for?

A The types of clients include--well, some of my bigger clients have been Sprint, LTV. I'm on retainer currently with Coca-Cola. We do work for Beatrice Foods, for--I'm just thinking, for different parts of the country--Anheuser Busch. It's a very wide range of different companies, a large percentage of which were clients of Ernst & Young. A number of others were not.

Q Tell us about some of your appraisals, though. For example, do you do appraisals for start-up companies?

A Oh, yes. We do occasional complete start-ups. More often we hit companies that are getting ready for an IPO, or an initial public offering, where they're going to offer stock on the public market.

Q Have you had occasion to value minority ownership in a company?

A Many times. Probably a third to half of the business valuations are regarded minority issues.

Q Have you had occasion to value cable television companies?

A Yes, I have.

Q Have you had occasion to value telecommunications companies?

A Yes, U.S. Spring, LDI, various microwave systems in Texas, long distance systems in about five other states.

Q Have you been qualified as an expert in business valuation in any Federal Courts?

A Yes, I have.

Q And have you been qualified as an expert in business valuation in any State Courts?

A Yes, I have.

Q Now, do you--have you ever worked with me or my firm, Mr. Wilson or his firm, or UIH or any of it's principals, to your knowledge?

A Prior to this engagement?

Q That's right.

A No.

Q Okay. Excuse me one second.

MR. CHASE: At this Point, Your Honor, I would move the admission of Mr. Bowles as an expert in business valuation and appraisal.

MR. MUNSON: Your Honor, I would like to do a brief voir dire, if I may.

THE COURT: Go ahead.

MR. MUNSON: And I would like to--if I could put this chart over here for a moment?

(Pause.)

MR. MUNSON: Can you see that from there?

THE WITNESS: Yes.

THE COURT: Before he begins--and it wasn't asked, but I'm curious. Do you have college degrees?

THE WITNESS: Yes, I've got a Master of Science in Measurement Theory and Statistics, and in that program, I took a combination of measurement courses, statistical courses, computer science courses and business administration courses. And I was admitted into a doctoral program in the area of measurement theory in 1982, I believe.

THE COURT: Where was your master's degree?

THE WITNESS: Illinois State University.

THE COURT: Okay. And you have a bachelor's degree, I assume?

THE WITNESS: I have a bachelor's, also, from Illinois State.

THE COURT: Okay. Thank you.

MR. CHASE: Your Honor, I'm sorry, but I didn't--I was trying to abbreviate it so we could--

THE COURT: No, I understand. I was just curious.

MR. MUNSON: I turned it down. Is that all right now?

THE COURT: It's either your jacket or your charisma. We're not sure which.

MR. MUNSON: I'll vote for the jacket.

VOIR DIRE EXAMINATION BY MR. MUNSON:

Q Ladies and gentlemen of the jury, Your Honor, Mr. Bowles, good afternoon.

A Good afternoon.

Q Just a few quick questions on your background, if I could, please.

You're not a certified public accountant, are you?

A I am not.

Q And you don't have a degree in accounting?

A No, I have no degree in accounting.

Q And you don't have a degree is business valuation, do you?

A No, I do not.

APPENDIX EK

Excerpt from Direct Rebuttal of J. Bowles

April 17, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 9850-9892; Transcript 7631-7673)

Excerpt from Direct Rebuttal of J. Bowles

April 17, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 9850-9892; Transcript 7631-7673)

like to ask a couple more questions.

THE COURT: All right.

MR. CHASE: I take it the witness has been received as an expert?

THE COURT: Yes, the tender is accepted.

MR. CHASE: Yes, I'd like to ask just a couple of questions about his background for the jury's purpose in light of that voir dire.

THE COURT: You're entitled to do that. Go ahead.

MR. CHASE: And then I'd ask if we could just call it a day because this is going to get a little bit dense.

THE COURT: All right.

MR. CHASE: Okay. Thank you, Your Honor.

DIRECT EXAMINATION BY MR. CHASE RESUMES:

Q Mr. Bowles, a couple of things real quick. Number one, have you heard of a degree in business valuation?

A There is actually a small valuation program located in Lindenwood College in St. Louis that offers a degree in valuation. I was asked to teach in it and didn't get a chance to because of some other commitments, but my partner taught at that school.

Q All right. Do you know of any other programs that would offer such a degree?

A Maybe one other on the East Coast, but there's only two programs that I've ever heard of in the country.

Q And you graduated college when?

A 1977. '78 is when I got my bachelor's, '82 for my master's, and I started my doctorate in about '82.

Q Okay. And how many appraisals have you done since then?

A Total appraisals--

MR. MUNSON: Objection, Your Honor. I'm sorry. Objection, Your Honor, asked and answered.

THE COURT: Overruled.

THE WITNESS: Well, he asked a different question. Okay.

Q (by Mr. Chase) How many appraisals have you done since--

THE COURT: Thank you.

MR. MUNSON: I feel like I've been overruled twice, Your Honor.

THE COURT: You have been, I guess.

MR. MUNSON: Mr. Chase is going to be number three. Go ahead. Go ahead, Mr. Chase.

Q (by Mr. Chase) Go ahead, you can answer.

A I'm sorry. Since that time, I've done somewhere in the neighborhood of 2,200 appraisals, involving everything from real estate and business valuation and tangible asset evaluation, certain types of specialty equipment, Boeing 747s.

Q Okay. That's fine.

A A broad range.

Q I just want you to do one more thing before I let you go. Have you got your deposition there?

A Yes, sir.

Q Mr. Munson wouldn't give me my fairness reading, so I'm going to give me my fairness reading. Turn to Page 66, please.

A I'm there.

Q All right. Now, he was asking you about whether there were specific standards on reviewing others' works. Do you remember those questions?

A Yes, I do.

Q All right. Look down at--look down at Line 22 on Page 66, and I'm going to read the balance here.

Line 22, "Are there any generally that address that?" Answer, "There are general guidelines for what has to be in an evaluation."

Question, "Other than that?" Answer, "No."

"Did you compare this evaluation against those general guidelines?" "Not directly."

"What do you mean not directly?" "I mean, I did not pull out the ASA guidelines specifically and go item-by-item, but since I was one of the authors of it and have strong familiarity, I would say yes, I have applied them."

Now, were those the answers you gave to Mr. Petrie's questions at that time?

Q Yes, sir, they are.

MR. CHASE: Okay. Your Honor, I would recommend we call it a day.

THE COURT: All right. Nine o'clock, folks. See you then, tomorrow morning.

THE WITNESS: Do I return this to you?

THE CLERK: Just leave it right there, sir.

THE WITNESS: Okay.

(4:30 p.m. - Jury excused.)

* * *

(Testimony continued on April 18, 1997; Transcript 7638)

(At 9:05 a.m. on April 18, 1997, in the United States District Court at Denver, Colorado, before the HONORABLE JOHN L. KANE, JR., U.S. District Judge, with Messrs. Chase and Wilson appearing as counsel for the plaintiffs, and Messrs. Bauer, Jentes, Munson, and Tully appearing as counsel for the defendants, the following proceedings were had:)

THE COURT: Okay. That's a tie.

MR. WILSON: Isn't that great?

THE COURT: There has to be some connection with psychopathology and ties.

MR. WILSON: Well, in this case, we've already established that, Your Honor.

(9:07 a.m. - Jury present.)

THE COURT: As somebody once said on television, "You ain't seen nothing yet."

MR. CHASE: Your Honor?

THE COURT: Yes, sir?

MR. CHASE: I never wear this tie until I've had at least 40 days with the jury. But, you should see the one I've got for 60.

MR. WILSON: That's enough.

MR. CHASE: So, that's my Go Gators tie. One other housekeeping, Your Honor, I think is important.

JOSEPH BOWLES,

called as a rebuttal witness on behalf of the plaintiff, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. CHASE RESUMES:

Q Mr. Bowles?

A Yes, sir.

Q Let's see if we can do this in a fairly brisk fashion here. One or two things I want to cover. You testified on direct--you're still on direct. You testified yesterday that you used to do fairness opinions; do you remember that?

A That's correct.

Q Could you tell the jury, please, what a fairness opinion is and what it involves?

A A fairness opinion is basically an analysis from the viewpoint of a set of shareholders that if a company is being bought or sold, the shareholders want to know if they're getting fair value for their shares, and once it takes place, everybody is forced to go along. So, what we do is we're looking at the enterprise value without any consideration of discounts of any type to understand whether the price being offered is somewhere around the fair value of the enterprise.

Q And, you used to do this in what capacity; with Ernst & Young or what?

A I did one fairness opinion with Ernst & Young, but most of them were while I was a senior vice-president of Underwood Newhouse, a regional investment banking firm.

Q Okay. Now, one other preliminary question. What percent of your time roughly do spend being an expert witness or working with lawyers?

A In terms of being expert witness for litigation, it's probably over the last five years less than 3 per cent of my time.

Q Okay.

A I do it very infrequently.

Q So, you find people like us to be rather distasteful?

A I refuse to answer.

Q Your Honor, I think the witness has to answer. Mr. Bowles, let me talk to you about what you've done. Did you do an appraisal in this case?

A No, sir, I did not.

Q Did you do any calculation of discount rates?

A No, sir.

Q Did you review the written opinions given by Mr. Carey and Mr. Jones in this case?

A I did.

Q And, did you sit here during the full testimony of Mr. Jones and Mr. Carey?

A I did.

Q And, have you read Mr. Carey's deposition and did you attend his deposition?

A I read Mr. Carey's deposition and attended, yes.

Q I'm going to ask you some very specific questions about things that Mr. Carey testified to and see if we can frame them up rather succinctly here. The first thing I'm going to ask you about is that Mr. Carey testified that in the literature for appraisal and the practice of appraisal, it's normal to apply a 40 per cent discount rate to startup companies.

MR. MUNSON: Objection, Your Honor. I believe that mischaracterizes the witness's testimony. He talked about--you talked about this yesterday and how these witnesses have been qualified and the difference between an appraiser, American Society of Appraisers, on the one hand and someone who is a certified public account who does valuation work on the other.

MR. CHASE: I'll change the question, Your Honor. I'll short circuit this objection.

THE COURT: All right.

Q (by Mr. Chase) With respect to valuation work, in general, Mr. Bowles, is there any set 40 per cent formula in the literature or in the practice for establishing a discount rate?

A No, there is not.

Q Now, with respect to the literature, Mr. Carey specifically mentioned Zukin as one of the authorities in the area of valuation. Do you remember that?

A Yes, sir.

Q And, does Zukin establish any set discount rate that you're supposed to look at with respect to a startup company?

A No, he doesn't.

Q Now, have you looked at Zukin and his discussion of startup companies?

A Yes, sir, I have.

Q Does he talk about discount rate, at all?

A No, sir, he talks about return on investment.

Q Now, could you tell the jury, please, what the difference is between a return on investment calculation and a discount rate?

A Could I use a flip chart?

Q Please? You can even take your pick. Let me clarify one thing before you start, Mr. Jones (sic). By return on investment, are you talking also about internal rate of return?

A Not necessarily, but they're very closely related.

Q Okay. Could you tell us then what Zukin is talking about in his book?

THE CLERK: Just a minute. Which one--are you going to use that one?

THE WITNESS: I'm going to use this one first.

THE CLERK: Well, you need a microphone over there.

MR. CHASE: Oh--

THE WITNESS: Or I can project. Can everyone hear me?

MR. CHASE: Well, I can because I'm standing right here.

MR. CLERK: Is he coming through okay?

MS. GALLARDO: Yeah. Why don't we move the table microphone and he's fine.

THE CLERK: Okay. Just a minute.

(Pause.)

THE CLERK: Okay. Now, we've got you covered.

THE WITNESS: Thanks.

MR. MUNSON: Your Honor, excuse me, two things. Could I move some place so I can see what he's doing, number one?

THE COURT: Of course.

MR. MUNSON: And, number two, I at least no longer know what the pending question is.

THE COURT: All right.

MR. CHASE: The pending question is to explain the difference between rate of return and discount rate.

THE COURT: All right.

THE WITNESS: Okay. The idea of discount rate is what converts in income stream into a value. So, if you go out on the stock market and you find a company that's selling for $1.00 a share--I mean, that's been going at $1.00 a share and is selling for $2.00 a share, then what's converting is the multiple of 10. That's a market test because all the buyers out there, everybody that's buying that stock, if they're trying to buy for eight times the--they don't get to buy it. If they're offering anything else less than what the market says it's worth, you can't buy it.

Now, there are two different concepts out there. The other concept is return on investment. That's sometimes called cash on cash. Let me show you how it works, Judge. Let's take a house. Let me use little numbers because it's easier for my mind to work with. But, let's say, you buy that house for $100 and a year later you sell it for $110. Okay? So, you paid $100 for it. Why did we pay $100? because there were other people trying to buy the house and that's what it took to buy the house. That relates to what the market price of the house is. But, we got around to selling it a year later and we got $110 for it. We made a $10 profit. And, if we divide that $10 profit by what we've invested, we've got what's called a 10 per cent rate of return.

Now, most of the time when people go to buy a house, they can't put down $100; think about it in big numbers. They've got to bargain it. So, let's look at it in terms of different ways you might buy this house. One way you might buy it is you might put down $50 and borrow 50. You put 50 in cash and you put 50 in debt. And, because I like to work with easy numbers, let's assume that the interest cost is 10 per cent and, because it's an investment, you get to deduct it for taxes and we'll use a 50 per cent tax rate. So, what that means is at the end of the day, the interest costs you five cents on the

dollar after tax. Okay? So, we've got 100 here and we're going to have a cost of debt, COD, of $2.50 to borrow the $50.

So, where does this investor come out? Well, he got the same $10 because that's what the asset increased. So, you've got $10 here. He paid $2.50 for his interest. So, he got a profit of $7.50 and how much was his investment? It was $50. So, if we take that $7.50 and divide it by $50, this guy just made a 15 per cent rate of return. This is return on the investment. He invested $50 in cash, he got 7.50 in profit; he did pretty well.

Now, let's look at it more like I would have to do it. If I was going to buy the house, I'd probably have to put down $10 and borrow 90. So, let's do that. Let's say, I borrowed--I put in $10 in cash and I borrow $90. The same $100, and what I paid for it is in cash, but where I got the cash is different; right? So, now, my cost of debt here is 5 per cent of $90; that's about $4.50. When I sell the house, I get $10. I have to take off my interest cost. So, I made $5.50 on an investment of $10. My return on investment, 55 per cent.

As you can see, I can control to some extent what my return on investment is just depending on how I finance those. That's why we don't look at this from a valuation standpoint because every investor can have a different profile. When you've got companies buying other things, companies use a combination of debt and equity. They're levered in some fashion just like you levered these investments. So, the return on the investment can be all over the place depending on who the people are. And, that's why these are not discount rates. If we took what people wanted to earn on average on the investment, among a whole population of people coming up, the average in there is what's the price going to be on the market and that's the discount rate. But, the rate of return for any individual person or any individual investor can be all over the place.

Q (by Mr. Chase) Okay. Thank you, Mr. Bowles. You can return to the stand. What I'd like to do actually, I'm going to have you come off the stand in a minute because we're going to keep it--you can stay there for a moment.

A Okay.

Q So, let me just see if we can summarize this. Does Zukin talk about rate of return or discount rate?

A Zukin is talking about rate of return in the context of venture capital investments.

Q Okay. And, does that have anything to do with the discount rate in figuring out the value of a cable T. V. system?

A Not in my judgment.

Q Okay. Now, you said venture capital. Tell us what that is?

A Well, it correlates to the idea of a startup, but what venture capital amounts to is when somebody first starts a business, if he cannot get anybody else to lend him money like a bank and he's got an idea and he wants to develop it and he doesn't have the resources himself to finance the company, then he has to go out and get somebody to invest in it. It's not exactly fair market value because to some extent if you didn't have to do it, you wouldn't do it. You don't want to give your company to somebody else.

So, what happens is you go out and you have to look for venture capitalists. These are people that invest in starting point of companies that are high risk. They have very high rates of return and the reason for it is that when a small company starts up, it may have to go out and sell capital a number of different times. First, they try to get the least

amount that they need that they think can get the job done. So, whatever the return that's used at that point may hold, and if they have to go back to the market--let's think about it this way. If you had 100 shares of stock out there to start with and the venture capitalist comes in and he buys 50 of them from you and it's earning $1.00 a share, then what the venture capitalist is going to earn on it is $1.00 a share. If the company has to go out and raise more capital in order to attain the same results that they were originally shooting for because they just didn't have enough capital, say, the company sells another 100 shares, well, suddenly instead of owning 50 per cent of the company, the venture capitalist only owns 25 per cent. So, the rates that are used for those have to be high enough to allow for the fact that every time the company goes out for money which is normal in a venture capital situation, the return rate is going to get watered down. And, as the number of shares increases, what you have to get as a return to meet the final market test of making no less than the market has got to be high. That's venture capital.

Q And, briefly, Mr. Bowles, based upon what you've seen and heard in this courtroom, is this a venture capital deal?

A No, not at all.

Q Now, is there a practice in the industry of putting some kind of a number on startup businesses or does it vary? A number in terms of discount rate?

MR. MUNSON: Objection, Your Honor; leading.

THE COURT: Overruled.

THE WITNESS: No, it varies all over the place depending on the nature of the startup.

Q (by Mr. Chase) Could you generally explain that, please?

A Can I use the flip chart again?

Q I'll tell you what. Let me get--I want to keep these because Mr. Gilmore--Your Honor, for the moment, I just want to make sure we don't throw these away. So, we'll mark this when Mr. Gilmore gets back.

MR. MUNSON: They actually flip over.

MR. CHASE: I known that. That's why it's called a flip chart. But, I want to--an unbelievable concept.

THE COURT: Mr. Gilmore asked me if you would take care of these things while he's out.

MR. CHASE: Okay.

MR. MUNSON: Well, they're sort of job training.

THE COURT: He secunded. That's what we--

THE WITNESS: Okay. When you're talking about startups, let's try to define the term. What a startup means is that it means that the business did not exist in a particular location the day before. We're coming in and we're going to start a company up. And, there are a lot of variables that affect how risky a startup situation is.

Now, I'm going to give you kind of an easy example. I recently had to learn how to cook. The first meal that I prepared, which was one that I'd watched my wife prepare 100,000 times, I discovered was pretty much trial and error. The first time I did it, the bread came out much later than the rest of the meal that was prepared. The spices were a little

different and my kids quickly informed me that this was not the meal we were supposed to be having. The first time I did it, it was terrible. I had to learn all these things and I didn't know what the issues were. By the time I'd done that meal about 40 times, I had something that bore some resemblance to what my wife used to do. I hadn't done it nearly as many times, but what we found was that, gee, the more times you make that meal, the more often the bread gets out of the oven at the same time that the chili gets finished and things seem to come together. Well, that bit where I began and start with trial and error and by doing it more and more times is what we called in the industry a learning curve. A learned curve is the fancy term to describe that practice improves performance. There will be nothing more.

So, if you think about where I started in terms of experience, let's call this axis the risk of my meal, and this, the number of times. Okay? And, the first time I did it, we'll say that this is the high risk level and this is the low risk level. And, we'll say the number of times, we'll just go from low to the more times I do it, the better it gets. We hope. My kids are praying that this is a continuing performance. So, what happens is we start up and the first time I did it was up here, and as I did it, my performance started getting better and better and better. And, folks, I'm somewhere around here. I haven't done it enough times that it's really good, but it's acceptable. Okay?

This is the same thing that happens in an industry. The first time you start something, let's take a company and, for example, we'll talk about one that's maybe a medical research company and the guy has got an idea to cure AIDS. Everybody knows there's a big market out there if you find the right answer. He's right up here. He knows where he wants to get. He's got a picture of it in his mind. He knows what the picture is just like I knew what the picture in the cookbook looked like.

He doesn't know how to get there necessarily, but he has an idea and it's high risk. Why? Because he's up here at the top of that trial and error process. He might get lucky and come down it real fast. He may go to all the wrong directions. That's where he starts out. Another company like that, if you think about McDonalds going way back to the day that Ray Crock (phonetic) started McDonalds. You might think that that is the number one hamburger. When Ray Crock started up, he hadn't made a hamburger. Here was Ray starting and making hamburgers. And, he didn't know whether people were going to like his hamburgers or not like his hamburgers. He had this idea called fast food and nobody had ever done it. He didn't know who his customers were going to be. He had guesses, but he didn't know. He didn't know what his expenses were going to be because it makes a big difference if you've got to invest $100,000 and you have to sell a million hamburgers versus if you had $100,000 you've got to write off and you've got 10 hamburgers. All those things were unknown back then. As we come through time, McDonalds has done--I don't even know how many times--

MR. MUNSON: Objection, Your Honor. If I may apologize for interrupting. I understand Your Honor's evidentiary rulings in this case to be that we're precluded from introducing evidence as to Wharf Cable's performance today and we're limited to valuating Wharf Cable's performance as of some dates in the past. This testimony he's talking about now, the analogy that he's using, he's talking about the performance of a company that was a startup and then later became successful. It seems to me that it's unfair for us not to be able to introduce that evidence.

THE COURT: Uh-huh. He's defining terms right now. It's not an interference with the ruling. The objection is overruled.

THE WITNESS: We won't worry about how far along the line we are, but let's say that at this point--I don't remember when it was that they did a billion hamburgers, but we went from doing one hamburger at the start to a billion and maybe 10,000--I don't even know how many locations. What changed between the time? What changed was like in cooking, the more times I did it, the better I got. No two of my meals were exactly the same, I can tell you, even using the same recipe. They looked somewhat similar, but they weren't the same. As McDonalds kept doing it, they got a lot of experience. They found out things that worked, they found out things that didn't work. After a while, they'd done it enough times that they knew who their customers were going to be. So, they could forget that. They knew how much the customers were willing to pay. They knew how much it cost to make hamburgers. They knew the issues in the industry. By the time you get down to here, we've got a startup. If you build the next McDonalds, you've got a startup.

The classic definition of startup; if it wasn't there yesterday, it is there today. But, the difference is here, we're starting out and we don't even have a recipe. We've got to invent the recipe back here. By the time we get here, we've got the whole book. We know 26 recipes to do whatever we're going to do, we know all the issues, we know how they relate. Now, do we have a perfect picture of what's going to happen down here? No. Every business has risks--

Q (by Mr. Chase) Mr. Bowles, let me throw in a question here because we're going to have to move it along.

A Uh-huh.

Q Could you get to how that now applies to where we are?

A Sure.

MR. MUNSON: Objection, Your Honor. I don't know what that question means. How that applies to where we are?

THE COURT: All right. Rephrase the question.

Q (by Mr. Chase) How your definition of a startup applies to your opinion that you've given?

A Yes, let me--

MR. MUNSON: Objection, Your Honor. I'm not sure what the opinion is that we're talking about here.

MR. CHASE: I believe the opinion was all startups are different.

Q (by Mr. Chase) Is that the opinion you just gave?

A That's correct.

Q Okay.

A So, let me just kind of give you the big flavor here. You go out to do this and you're the first time in. This is a high risk end, terrifically high. We don't know all the issues. We're going to walk in there and we're going to try it and we're going to find our way. That's a startup, too. But, we've got an awful lot of information. It's like we've been cooking for 10 years and we've got--everything is exactly perfect every time, it's completely the same, everything exactly the same time. But, this is a completely different risk than that. That's why we can't use the one rate because we have the term "startup". This thing is completely different. We can't get anybody to come in an finance that one. This is venture capital. Down here, you go to the bank and say I'm going to build a McDonalds, I've got a franchise, they're there tomorrow.

You look at this in the context of the cable industry, cable industries have been out there--and at the time I did my valuation which was May 1992 in cable, what I was taught was that research indicated that there were about 13,000 cable systems in the United States and there's several thousand in the world. It's been done a lot of times. So, we're not as--when you look at a cable system today, is it McDonalds? No. Is it up here? No. It's somewhere up in that kind of region. Where exactly; who knows?

Q Well, how do you determine it?

A It's a matter of expertise. The question is expertise and that's why you go to the most expert people you can and you go to the industry consultants that understand the industry and intend to make that decision.

Q Okay. Now, I'd like you to use this chart--you have better handwriting than me--to just write out a phrase, if you could, what your opinion is on startups. Print bigger, if you could, Mr. Bowles. We can use more pages if we need to.

A Okay.

(Pause.)

Q Now, one more question about the literature in the area. We covered Zukin and other names that were mentioned were Pratt, Ibbotson, and of course, I always throw in things like Galarraga and Bichette, but that's not real. With respect to the other people that write in the area of valuation, are you aware of anybody that establishes a rate that you're supposed to apply to a startup?

A There's nobody that says that there's a specific rate used for the startup. And, the reason is pretty obvious. If there were

only one rate out there, if it wasn't fact-specific, and somebody wanted to start a startup, how do you double the number? You double the projections. The projections and the rate are integrally related because the rate is used to adjust for risks associated with the projections and the projections can be anywhere. So, if you just pick a number and say, well, this is it, went to the book, found the rate, that's the rate, I'm always going to use that rate, and you don't understand what you're applying it to, there's reason to say in the computer world "garbage in, gospel out". You get a wonderful looking number and it means absolutely nothing.

Q Well, don't move because that takes me to the next thing I was going to ask you about. We may be doing some more writing. Mr. Carey testified that it's improper to evaluate single point projections in terms of quantifying risks for a discount rate. Do you have an opinion on that?

MR. MUNSON: Objection, Your Honor. I believe that mischaracterizes the testimony. I believe Mr. Carey testified that that's not what he did.

MR. CHASE: Well, I'll ask it differently. I believe it does, but I'll ask it even more broadly.

Q (by Mr. Chase) Do you have an opinion about the interrelationship between projections and discount rate?

A Yes, very much.

Q What is that opinion, please?

A I believe the two are integrally related. That you cannot ascertain what an appropriate discount rate is unless you understand the quality of the projections. And, further than that, what Mr. Carey said if you take it directly as true, if

somebody put in front of me a set of projections, nothing else but the set of projections--

Q You know what, hold on a second because--

A --I wouldn't understand.

Q --you're not at a microphone right now and, frankly, maybe you better move back there and you're going to have to just--

A There's a microphone here.

Q Okay.

THE CLERK: That's okay. We're picking him up.

MR. CHASE: Oh, good. Okay.

THE WITNESS: Okay. If somebody just put nothing but a set of projections in front of me, all I've got there are a set of a numbers and those numbers could mean anything. I would have no idea. And, that's why, first of all, when you look at projections, you don't look at them by themselves. You look at them in comparison to the industry. It's also the reason why you go to experts in an industry who can look at a projection and understand whether those projections and the assumptions that underlie the projections are aggressive or conservative.

For instance, when you look at a set of projections, you have a revenue number. The revenue number is not a stand-alone number. Behind it is some type of assumption as to what is happening to get you to the number; how many customers you have, how many potential customers you're going to have. And, if you look in terms of an industry experience, you can say, well, gee, in the context of cable, it's usually based on

homes passed. And, you can say, gee, maybe the range that we see in the industry is 25 to 55 per cent of the homes passed are going to become customers. Well, if you're analyzing the projections, you look and you say, all right, here's the range, the average might be 40 per cent. And, you look at the revenue number and say was it built using the 40 per cent level or the 20 per cent level or 60 per cent or where? You can go item by item through the forecast to understand whether each of those items was done on the conservative side, on the average of what's been the experience in the industry, or way out here in the, gee, we'd love it to happen and if everything goes right, that's what we get. That's our first point of understanding before we get down to that question of what the discount rate is. We've got to understand are the projections conservative or aggressive?

That's a matter of two things. One, you can't do it just looking at the numbers. You have to go out and get industry information. That's why somebody that's got a lot of industry experience and has built these for other companies has got a real advantage. When somebody like Mr. Jones does it, he's got the experience to do it directly. When I do it, I have to go out and pull the information from all the cable companies that I can find and lay it out and find out how they all did and then make a comparison of these projections to what I see out there to find out how it fits.

So, that's the reason why you've got to have a detailed understanding of those projections. The fact that the final numbers are point estimates is really not the issue. The issue is are the point estimates based--I mean, is that revenue number based upon aggressive assumptions, conservative assumptions, average assumptions? Does it edge one way or does it edge the other? That's what you've got to understand. And, if you do that at every level of the statement, you can find out pretty clear whether or not you ought to be using a higher discount rate

because, boy, this pie in the sky stuff; or, whether you ought to be using something lower than the market averages because, gee, this thing is so conservative that it's understating what a reasonable investor would expect.

Q (by Mr. Chase) Now--well, go ahead? I'm sorry, I didn't mean to interrupt.

A That's it.

Q Now, Mr. Carey testified that he did not evaluate the projections. Did you hear that testimony?

A Yes, I did.

Q Can you do any kind of a business valuation without evaluating the projections?

A There's just no way to understand what you've got. Like I say, projections by themselves is just a piece of paper. It's what lies behind that piece of paper and how you got to the numbers on that paper that's the important thing. And, that's why, you know, when we look at a company, we don't start out just looking at the projections. That's not the starting point. We have to understand the industry drivers, how does the industry work, where does it get its customers, what are the issues on its costs, what are the things that happen, how wide is the range of what happens?

Q Okay.

A We go through all of that to get to an understanding of it and that's why an industry expert is very helpful in these situations.

Q All right. Mr. Bowles, will you write down there on the board your second opinion with respect to the relationship--you can make it a little bit bigger. You don't have to cramp this. The relationship between projections and discount rate.

Okay. Now, let me ask you if you will return to the stand, and I'll ask you some more questions about a different subject. Mr. Bowles, Mr. Carey testified that it's appropriate valuation methodology to apply a discount off of the value when somebody is going to be a minority or when they're going to have limited liquidity. Did you hear that testimony?

A I did.

Q And, he said it's appropriate to apply that in a situation such as this case where the majority shareholder ends up with the stock claimed by the minority shareholder. Did you hear that?

A Yes, I did.

Q Do you have an opinion on the validity of that?

A Yes, I would say that that's not the way we would do it in the appraisal industry.

Q Tell me what you would do and why?

MR. MUNSON: Objection, Your Honor. I understood the witness testimony to be he was admitted to give an opinion on the methodology that Mr. Jones used. This question plainly doesn't go to that issue.

MR. CHASE: Well, actually, it does, but it goes directly to what Mr. Carey was saying in criticism of Mr. Jones.

THE COURT: The objection is overruled.

Q (by Mr. Chase) Go ahead, Mr. Bowles?

A The issue from a valuation standpoint where an interest has been taken is the value in the hands of the person that took it. In the present state when there's only one shareholder over there, when that shareholder gets whatever set of shares he's taken, those shares are indistinguishable from all the rest of his shares. He's got control of everything, and therefore, the normal standard would be proportional value of the enterprise. You know, the real thing that you're saying there is to the extent--I mean, if there's only one shareholder and what he's going to earn on those shares is exactly what he's going to earn on every one of his other shares, to the extent that you give any discount whatsoever, from that, what you're doing is you're just giving him a gift. You're saying we're taking the value from this guy over here and we're giving it to you because you took the shares and you're going to earn the same thing you were on the other shares.

Q Well, let me ask you--Your Honor, if I could, there's a slight distraction--

THE COURT: Excuse me, just a minute. I'll take care of it.

THE COURT: I get to be a grinch every now and then.

(Pause.)

THE COURT: I feel better now, excuse me.

MR. CHASE: Well, all I can say is, thank God, it wasn't me.

Q (by Mr. Chase) Let me get back to where you were talking about the inappropriateness of a discount in this situation. Let me ask it a different way. In this case, are we talking about a fair market value situation?

A No, we're not.

MR. MUNSON: Objection. Objection, Your Honor. I don't know what that question means.

THE COURT: Overruled.

Q (by Mr. Chase) And, I'm going to ask you what does it mean? What is the difference between a fair market value situation and what you're talking about in this case?

A Fair market value pertains to a number of ideas. One is that you've got a willing buyer and a willing seller so that both parties are doing something voluntarily. Neither one is acting under duress. That means they're not forced to do it. And, in a fair market value situation, what generally happens is if anybody other than the controlling shareholder buys the shares, then whoever buys them is stepping into the same shoes as the seller.

Q All right. And, why is that not this situation?

MR. MUNSON: Objection, Your Honor. Let me articulate this a little better. I believe that this testimony that's being elicited now is not proper rebuttal testimony and that this issue didn't come up in any new sort of way in the defense case and that this testimony on that issue, therefore, is not appropriate rebuttal testimony.

THE COURT: Overruled.

THE WITNESS: The situation we have here is the person has been allegedly deprived of his shares and the person who did the depriving is allegedly the one that's going to have the benefits of it and is a majority shareholder.

Q (by Mr. Chase) All right.

A And, therefore, from the standpoint of what he got versus what he took, what he got was something which was identical to all the other shares that he owns and he has all the--you know, in the same position he was with respect to all of his other shares as a majority shareholder.

Q And, can you please go back to the board then and write out opinion number there here? This is on your minority liquidity discount issue.

MR. MUNSON: Objection, Your Honor; slightly leading.

MR. CHASE: Well, I just want to make sure we're talking the same thing here.

MR. MUNSON: Well, that's the--

THE COURT: The objection is overruled.

(Pause.)

Q (by Mr. Chase) Thank you. If you could return to home base now. I have just a few more of these to cover with you. Mr. Carey testified that the absence of a shareholder's agreement would diminish the value of this investment. Did you hear that testimony?

A I did.

Q Do you have an opinion on the validity of that observation?

A I disagree with it in the manner that he was describing it.

Q Could you explain that, please?

A The methodologies that we use in valuation in developing discount rates in the manner that is consistent in the industry like Mr. Jones did utilizes market shares being traded out in the public market. None of those shares have a shareholder agreement with them or very few of them as a point. So, consequently, the basis under which we developed our rates in the marketplace to try to estimate the value of an interest doesn't have a shareholder agreement in it. So, the valuation at the first point is without consideration of a shareholder agreement. To the extent that a shareholder agreement exists, it enhances the value. In other words, the value may go up as a result of a shareholder agreement, but as long as standard valuation methodology is being used and applied properly, the absence of the shareholder agreement doesn't cause it to decrease in value.

Q Now, you say in your earlier testimony that you do a lot of work with closely held corporations. Those would be non-publicly traded corporations?

A That's correct.

Q And, I take it, you've dealt with partnerships, also?

A I have.

Q Let me deal with the corporations. Is it customary for you to see a shareholder's agreement?

A We generally don't see shareholder agreements in closely held companies except when you get relatively large minority positions such as 30 to 40 per cent and they're tied to venture capital deals.

Q Okay. Why don't you, if you could, go back to the board and just give us a quick summary of what your opinion is with respect to shareholder agreements?

A I'll think I'll flip over and make it easier to write.

(Pause.)

Q Thank you. If you could return to home base, I'll ask you another question. Mr. Carey testified that UIH's option should have been valued as a stand-alone financial instrument. Do you remember that testimony?

A I do.

Q Do you agree with that?

MR. MUNSON: Objection, Your Honor. That is not what the said. He said that he valued the option as an option. He didn't say he words he valuated it as a free-standing legal instrument. Now, I don't mean to quibble over the words, but I just don't--

THE COURT: I think you are.

MR. MUNSON: Okay.

Q (by Mr. Chase) Do you agree with that?

A I agree that's what he testified.

Q Do you agree with what he said?

A No, not in this particular case.

Q Could you explain that, please?

A When you're looking at the value of an option, the value comes from the assumption of exercise. In other words, if an option is sitting there and it's never exercised, it's just out there. The value, therefore, has to be looked at from the standpoint of the value of your incremental benefit from exercising the option. And then, to the extent that anything else is out there, you adjust for the risk for that as Mr. Jones did when he took a discount. What the discount really does in that context is if you say that the discount is 15 per cent, what's that saying is that there's a 15 per cent probability of nothing happening. So, you get zero for that and you recognize the risk. The only thing that I would disagree with in Mr. Jones' methodology is that an option, in fact, has value that may be greater than what that calculation does directly. That is because, as long as you've got an option, you have all the benefits of taking on the upside, but you don't have any risks on the downside.

Q Okay. Could you go put that opinion up there, please?

(Pause.)

Okay. Let me stay with this subject just another moment, Mr. Bowles. You said that Mr. Jones made an adjustment in his October valuation. Can you explain that, please?

A Yes. In his calculation which came up with the values, he took the present value times .85 which is the--I assume, his probability for--well, let's put it this way. It has the effect of

saying that he's only given value to 85 per cent of the value of the company at that point in time instead of 100 per cent.

Q Okay. Let me do this with you so that we can see what you're talking about. I'm going to hand you Exhibit 1622, 1645, 1646, and 1647 and these are the exhibits reflecting Mr. Jones' calculation on his October 1992 valuation. I'd ask you could explain it to us and I believe these are also in the jury book, but I will also put them on the screen. It may be easier. Let's try to do this briefly and just tell us where to go and tell us where this 85 per cent is found in this October '92 valuation?

A Okay. Basically, if you look at Exhibit B where you see the gross value of Hong Kong dollars--

Q Well, you called it Exhibit B. That's what it says up in the upper right corner. What does it say in the lower right--

A Oh, I'm sorry, 1622. Is that the right number?

Q Yeah, is that where you're looking first?

A That's correct.

Q Okay.

A If you look at the gross value of Hong Kong dollars where it says--are we on the right schedule here? Yeah. Where you'll see the estimated values with a 15 per cent discount.

Q Well, that's what we need to explain. Where is the 15 per cent?

A Okay. Basically, the way the calculations were done was it used a standard calculation for present value and when he did

the present value calculation, he multiplied the calculation itself by .85. So, instead of showing it as three lines, if you will, a value before the discount minus the 15 per cent discount equals the value shown, he went to the value shown in one step.

Q Okay. And, that's reflected then in this gross value column on this Exhibit 1622?

A That's correct. The gross values there shown already include the 15 per cent discount.

Q And, that's 85. So, what he does is he says--or risk fact, he says 85 per cent instead of 100 per cent?

A Well, yes, basically, he's saying that there's an 85 per cent probability that the value will be recognized and there's a 15 per cent probability there's no value--the value will not be recognized and in some of those it's the same thing as just multiplying it by .85.

Q And, this is in addition to the discount rate?

A That's correct. This is an additional adjustment for risk.

Q All right. Okay, you've already written that on the board.

Let me go to a different subject here. Terminal multiple and residual value. Do you remember both witnesses mentioning that?

A Yes, I do.

Q All right. Just to remind up, please, tell us what a terminal multiple is and residual value?

A When you're looking at a value of a company and you use projections, you only can project so far and, beyond there, the company continues to earn because a company theoretically lives forever. So, if you're generating income at the end of the period and you're presumed to grow--you grow at some point in time or maybe even stay flat, but there's all this income that goes out from the end of the 10th year to whenever the company ultimately dies, 50, 100, 200 years from now. So, what we do in valuation is we have to estimate what the value is at that point in time of all those future incomes that the company is going to receive on the discounted value. Now, normally, we do that by using some type of terminal multiple. And, a terminal multiple is nothing more than like a PE in the stock market. It's a multiple of earnings of some sort.

Q You'd better tell us what a PE is? I always thought it was phys ed.

A I'm sorry, price earnings multiple. Basically, if you say the company earns $1, it sells for $10, the price earnings multiple is 10 divided by 1 or 10 times. You apply that multiple at the end of the period to get what we call a residual value and the residual value is nothing but the value of all those income streams off into the future from that point in time and then you apply a discount to bring that back to its present value from the end of that period. In most cases, the terminal value will account from anywhere from 60 to 90 per cent of the value of an enterprise. So, it becomes very important.

Q Now, Mr. Carey testified that he did not consider a terminal multiple of a residual value. Did you hear that testimony?

A I heard the testimony.

Q Can you value an enterprise without doing that?

A In no way that I know of can you exclude the value of the company after 10 years. I know of no way to do that.

Q How does it affect the ultimate valuation judgment if you don't do that?

A Like I say, the residual value in most cases will run anywhere from 60 to 90 per cent of the value of the enterprise in present value terms. So, if you leave that out, you've understated value by anywhere from 60 to 90 per cent.

Q Now, Mr. Carey testified that he can account for that by doing some adjustment to the discount rate. Do you remember him saying that?

A Yes, I do.

Q First of all, did you see any adjustment to a discount rate based upon some kind of compensation for not using a terminal multiplier?

A I, quite honestly, know of no way, whatsoever, to do that in a discount rate because what the discount rate is doing is taking value at whatever an observed income is at a point in time and subtracting the rent of the money for the use of that for that period of time and what's left over is the present value. And, mathematically, I know no way to make any type of adjustment in the discount rate for a finite period which in any way would account for the residual value after that period.

Q Have you ever heard of any valuation practice of any kind that does that?

A No, sir, I have not.

Q Could you go back to the board and write out in verse your opinion with respect to terminal multiple and residual value?

(Pause.)

Mr. Bowles, I think we're going to make you a lawyer. You're the only person I know that can write in fine print on a flip chart. Mr. Bowles, one final question on this subject. Residual value and going concern value, which is a phrase more people have heard of, are they the same thing?

A No.

Q How are they different?

A Well, going concern value encompasses the idea of the company all the way through the period from the beginning of the projections to the end; whereas, the residual value is

APPENDIX EL

Bench Ruling of Kane J. on Jury Instructions

April 21, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 1549-57)

Bench Ruling of Kane J. on Jury Instructions

April 21, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 1549-57)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 94-K-2560

UNITED INTERNATIONAL HOLDINGS, INC. et al.,

Plaintiffs,

v.

THE WHARF (HOLDINGS) LIMITED, et al.,

Defendants.

BENCH RULING ON JURY INSTRUCTIONS

KANE, J.

As this three-month long jury trial enters its final days, I issue the following rulings with respect to certain disputes regarding jury instructions:

1. Colo. Rev. Stat. § 4-8-319 -- Statute of Frauds.

In the jury instruction conferences preceding the first day of trial, I rejected Wharf's proposed jury instruction on Colorado's statute of frauds applicable to contracts for the sale of securities, Colo. Rev. Stat. § 4-8-319 (Vol. 2, 1995 Cum. Supp.). The statute of frauds was repealed during the pendency

of this lawsuit, see Laws 1996, S.B. 96-132 (effective July 1, 1996), and contracts for the sale or purchase of securities are now enforceable "whether or not there is a writing signed or record authenticated by a party against whom enforcement is sought." Colo. Rev. Stat. § 4-8-113 (Vol. 2, 1996 Cum. Supp.).

Because the repeal of the statute of frauds was not made retroactive by the Colorado legislature, Wharf contends the statute applies and constitutes an affirmative defense that must be submitted to the jury in this case. I disagree.

As an initial matter, the question of whether former § 4-8-319 applies to the option agreement at issue in this case is complex and disputed. Section 319 applies only to contracts for the sale of "securities." A "security," for the purpose of Article 8, was defined in former § 4-8-101(d) to include "certificated securities" and "uncertificated securities." Such securities, in turn, were defined at § 4-8-101(b) and (c) respectively. The option at issue does not fit easily into either definition. [1]

The Revision Notes preceding the new Article 8 offer insight into the type of securities and securities transactions to which former § 319 applied, as well as the Colorado state legislature's thoughts on the utility of applying the statute to promises such as those at issue in this case:

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[1] A "certificated security" as defined by § 4-8-102(1)(b) is one that is (i) "[r]epresented by an instrument issued in bearer or registered form," and (ii) "one of a class or series or by its terms divisible into a class or series of shared." An "uncertificated security" is one whose transfer is not (i) "registered upon books maintained for that purpose by or on behalf of the issuer," and (ii) is not "one of a class or series by its terms divisible into a class or series of shares." UIH contends the definition of a "security" under Article 8 is not the same as the definition of a security under federal securities laws, citing comment 3 to former § 4-8-102 ("[T]his definition has no bearing upon whether an interest is a 'security' for the purposes of the federal securities laws").

> **7. Former Section 8-319 – Statute of Frauds.**
>
> Revised Article 8 deletes the special statute of frauds provision for securities contracts that was set out in former Section 8-319. See Revised Section 8-113. Most of the litigation involving the statute of frauds rule of the prior version of Article 8 involved informal transactions, *rather than transactions on the organized securities markets.* Typical cases were those in which an employee or former employee of a small enterprise sued to enforce an alleged promise that he or she would receive an equity interest in the business. *The usual commercial policies relating to writings in contracts for the sale of personal property are at most tangentially implicated in such cases*. There was a rather large and complex body of case law dealing with the applicability of Section 8-319 to cases of this sort. It seems doubtful that the cost of litigating these issues was warranted by whatever protections the statute of frauds offered against fraudulent claims.

Revision Notes, § 7 (Vol. 2, 1996 Cum. Supp.) (emphasis added).

Even if the option at issue in this case could be shown to fit within the definition of "security" under Article 8, it is clear this case falls within one of several equitable exceptions to the statute of frauds.

The Colorado Supreme Court described the history of the statute of frauds and the exceptions that have evolved since its adoption by the English courts over 300 years ago in Kiely v. St. Germain, 670 P.2d 764, 768 (Colo. 1983) (en banc). In Kiely, the Colorado Supreme Court recognized that the statute of frauds, as part of the Uniform Commercial Code, is supplemented by principles of law and equity. Id. at 770 (citing Colo. Rev. Stat. § 4-1-103 regarding construction of Code provisions). Where a prospective employee's claim for

damages based on his employer's alleged promise to sell him 49 shares of stock was based, in part, on a theory of promissory estoppel, the court concluded the employer could not invoke § 8-319 as a bar to recovery. Rather, the trial court was required to "utilize a balancing test to prevent use of the statute to effect inequitable results." Id.

Other doctrines that preclude application of the statute of frauds include fraud, full performance of the obligations under the oral contract or partial performance where the performance was substantial and required by and fairly referable to no other theory besides that allegedly contained in the oral contract. Nelson v. Elway, 908 P.2d 102, 108 (Colo. 1995). Wharf seizes upon the "required by and fairly referable to" language in Nelson and argues UIH's performance under the alleged option agreement was voluntary or attributable to a theory other than that UIH believed itself entitled to a 10% interest in the cable franchise by virtue of the agreement. There has been no evidence of any other agreement or obligation that compelled UIH's performance and I am unpersuaded.

Given the dubious applicability of the statute of frauds to the option agreement at issue in this case, and the dubious utility of such an instruction even if it were to apply, I decline to instruct the jury on the statute of frauds, Colo. Rev. Stat. § 4-8-319 (1995 Cum. Supp.). The occasion for juror confusion is simply too great and unnecessary based on the facts as they have unfolded over the past three months of trial.

2. Multiple Recovery.

Plaintiffs UIH and UIH Asia seek to recover the value of the 10 % interest in the Hong Kong cable television franchise under several theories of relief. Plaintiffs concede their injury under each of these theories of relief is the same, namely, the loss of their right to purchase a 10% interest in the Hong Kong

cable television franchise they helped Wharf secure. Both sides agree UIH and UIH Asia cannot recover twice for this loss, even if the jury were to return a verdict in their favor on more than one of their six theories of relief. They disagree, however, on the manner in which the rule prohibiting multiple recovery is to be applied.

Wharf argues that under American Furniture Co. of Denver v. Veazie, 281 P.2d 803, 806 (Colo. 1995), it is the jury, rather than the court, which must apply the rule. Accordingly, Wharf has submitted a proposed verdict form listing UIH's six claims for relief and then instructing the jury that it "may only place an amount of damages on one line below." See Defs.' Proposed Additions to the Verdict Forms (filed 4/11/97), ¶ G. UIH disagrees with this approach, and argues that I apply the rule, if necessary, when I enter judgment on the jury's verdict.

I agree with UIH. In a case such as this, where the jury must consider six independent claims for relief, instructing the jury to consider each claim but award damages only on one would invite juror confusion. What if the jury finds Wharf liable under two theories of relief but cannot decide, as between the two, which measure of damages to award? Does the jury average the two? Will the failure to award the higher figure mean Plaintiffs will not have been made whole? Clearly there are practical issues that militate against the approach advocated by Wharf.

Further, none of the cases cited by Wharf in support of its position mandate the approach taken. In the American Furniture case, the Colorado Supreme Court reversed a judgment entered by a trial court on two awards of damages for a single loss. 281 P.2d at 806. The trial judge had given the jury three separate verdict forms -- one for a verdict on plaintiff's first cause of action, one for a verdict on plaintiff's second cause of action and one for defendant -- instructing the

jury to return only one. Id. at 805. When the jury returned a verdict of $4,863.87 on the first and one for $2,431.94 on the second, the trial judge expressed dismay.

> I hardly know what to say. The jury instructions said to bring in one of three verdicts. You brought in two verdicts. I believe the only thing I can do is to accept them.

Id. The judge ordered judgment to enter on both verdicts, resulting in double recovery for the plaintiff.

The error in American Furniture was the trial judge's failure to apply the rule prohibiting multiple recovery when the jury returned verdicts in favor of plaintiff on alternative theories of relief. The error was not, as Wharf suggests, the jury's failure to apply the rule. Courts of appeal cannot reverse a jury.[2]

Accordingly, I will instruct the jury on the rule prohibiting multiple recovery as set forth in new Instruction No. 69, appended to this ruling. The jury will be instructed to consider each of UIH's claims separately, and to enter an award of damages on each, if liability is found, without regard to its finding for or against UIH on any other claim. While I will instruct jury members that UIH may recover its damages only once, they will be told that I, rather than they, will apply the rule after they reach their verdicts. In this way, the record will be complete and clear with respect to each of UIH's claims and the potential for juror confusion and inaccurate verdicts

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[2] In addition, I note that federal courts may be persuaded, but are not bound, by decisions of state courts. The entire process of instructing juries evolves from the common law. In the absence of a federal statute or binding federal case law to the contrary, I may instruct the jury according to my own understanding and application of the law.

resulting from the jury having to apply the rule will be minimized.

This approach is consistent with that affirmed by the Colorado Supreme Court in Lexton-Ancira Real Estate Fund, 1972 v. Heller, 826 P.2d 819 (Colo. 1920). In Heller, the trial judge instructed the jury on the rule but stated that he would apply it: "[Y]ou should not concern yourself that the damages under one claim may be the same as damages suffered under another claim. The Court will only award to [plaintiff] the amount shown by you to be the total actual damage." 826 P.2d at 824. After the jury returned its verdict, the court determined whether the damages awarded by the jury on the two claims were duplicative and entered judgment accordingly. Id. at 825.

Dated this 21 day of April, 1997, at Denver, Colorado.

/s/ John L. Kane, Jr.
JOHN L. KANE, JR.
U.S. SENIOR DISTRICT COURT
JUDGE

APPENDIX A

INSTRUCTION NO. 69

MULTIPLE RECOVERY PROHIBITED

A plaintiff in a civil action may recover only once for the same injury, even though it seeks an award of damages for that injury under several theories of relief. For example, a plaintiff who lost $100 as a result of defendant's conduct may recover only $100, even if plaintiff sought $100 in damages from defendant on one claim, and $100 in damages from defendant on a different claim.

In this case, UIH is seeking damages under six different theories of relief: fraud; negligent misrepresentation; breach of contract; securities fraud; control person liability; and breach of fiduciary duty. Under the rule prohibiting multiple recovery, UIH may recover its damages only once, even if you return verdicts in UIH's favor on more than one of its claims for relief.

I am instructing you on the rule prohibiting multiple recovery so that you will be aware of the law on this issue. It is I, rather than you, however, who will apply the rule. You are specifically instructed to consider each of UIH's claims independently. That is, you are to consider each of these claims as though it were the only claim in this case. If you find in favor of UIH on any one of its claims, you are to write in an award of damages on that claim without regard to your finding for or against UIH on any other claim. I will apply the rule when I issue my judgment on your verdict, whatever that may be.

Perhaps it bears repeating that nothing in this or any other instruction is meant to suggest what your finding on any or all

claims should be. My instructions on damages are only to be applied in the event you find liability.

APPENDIX EM

Final Jury Instructions

read on April 23, 1997

U.S. District Court for the District of Colorado

(Supp. App. 39-117)

INSTRUCTION NO. 1

INTRODUCTION

In order to help you follow the evidence, I will now give you a brief summary of the claims and defenses.

The parties that bring a lawsuit are called the plaintiffs. In this action, the plaintiffs are United International Holdings, Inc., which I will refer to as UIH, and UIH Asia Investment Co., which I will refer to as UIH Asia. UIH Asia was a general partnership and UIH was its managing general partner. The parties have agreed, for purposes of this case, to treat UIH and UIH Asia as the same. Thus, if you find for either UIH or UIH Asia, or for both of them, on any of the claims, you should enter your verdict for UIH. For the remainder of these instructions, I will use UIH to refer to both UIH and UIH Asia.

The parties against whom the lawsuit is brought are called the defendants. In this action, the defendants are The Wharf (Holdings) Limited, which I will call Wharf Holdings; Wharf Communications Investments Limited, which I will call Wharf Communications; Wharf Cable Limited, which I will call Wharf Cable; and Stephen Ng, who is and has been a senior officer and director of Wharf Holdings, Wharf Communications, and Wharf Cable. For purposes of this instruction, I will refer to the Wharf entities as "Wharf"and Stephen Ng as "Ng."

This is a case for fraud, breach of fiduciary duty, breach of promise, and other claims against Wharf and Ng.

UIH contends that all of its claims against Wharf and Ng arise out of a pattern of deceit by Wharf and Ng, the goal of which was to induce UIH to provide its knowledge, expertise, reputation, and services in a combined venture with Wharf

Holdings and Wharf Communications to obtain the license for, develop and implement the Hong Kong cable television franchise. This franchise, which was the object of the venture, is potentially one of the largest cable television systems in the world. On June 1, 1993, the venture was successful in obtaining the franchise for Wharf Cable, and on October 31, 1993, the Hong Kong cable television system went "on the air."

UIH contends that, beginning in the late spring of 1992, Wharf and Ng represented, promised, and ultimately contracted with UIH that in exchange for UIH's continuing commitment to the venture, UIH was entitled to acquire a 10% ownership interest in the project. At the time Wharf and Ng made these representations and promises to UIH, they had no intention of fulfilling them. Further, Wharf and Ng failed to tell UIH about hidden conditions that Wharf and Ng now claim had to be fulfilled before UIH could invest. Only after UIH attempted to exercise its right to invest, in the summer of 1993, did Wharf and Ng claim that the right to invest was subject to unfulfilled conditions. From then until March of 1994, Wharf refused to let UIH exercise its right to invest. Finally, in March 1994, Wharf and Ng categorically denied UIH's right.

In reliance on the representations of Wharf and Ng concerning UIH's right to invest, and without knowledge of Wharf's undisclosed facts and conditions, for approximately a year, UIH provided substantial services to the cable TV venture, and lent its name, reputation and credibility to the venture. All of this was critical to the success of the venture.

If UIH had known of the intention of Wharf and Ng not to allow UIH to invest in the project, or if they had known of any of the conditions that Wharf or Ng later asserted, UIH would not have made its massive commitment of knowledge, expertise, reputation or services to the venture.

After the venture was successful in obtaining the cable T.V. license for Wharf Cable, defendants repudiated the rights of UIH in the project and took for themselves the entire value of the venture, including the 10% ownership interest in the project which was promised to UIH. UIH contends that the value of that 10% interest should be restored to them in this case. Among other things, UIH's claims are that Wharf's and Ng's promises and representations constituted fraud and deceit, a breach of contract and a breach of a fiduciary duty owed to them by Wharf. This fiduciary duty was a duty to act with the utmost good faith and loyalty, as well as a duty of full, fair, open and honest disclosure.

The defendants Wharf and Ng sharply dispute UIH's claims and allegations. Defendants contend there was never any contract to give UIH a 10% interest in the Hong Kong cable television project. Nor did defendants deceive or defraud UIH or UIH Asia in any way about their role in that project. Defendants also deny they ever took any actions creating a fiduciary duty to UIH.

Defendants maintain that, throughout their negotiations with UIH over its possible participation in the Hong Kong cable television project, defendants made clear that UIH could only obtain an interest in the project if several important conditions were met. These conditions were not hidden from UIH. They were openly discussed and are spelled out in documents prepared by UIH and its own lawyers. The conditions included:

1. That the parties had to agree on and sign a written contract;

2. That the written contract had to spell out all of the terms and conditions under which any party would have a right to invest in the Hong Kong project;

3. That the written contract had to include not just UIH and Wharf, but also a large telecommunications company; and

4. That the written contract had to receive the approval of the Boards of Directors of each of the three companies.

The defendants claim that a formal written contract among the three parties was crucial because the Hong Kong project was large and complicated, including a multi-million dollar investment in both cable television and telecommunications facilities. According to defendants, UIH knew all along the telecommunication partner was intended to be NYNEX, which operates telecommunication networks in the United States, Europe and the Far East. When NYNEX eventually decided not to participate in the Hong Kong project, defendants assert UIH was told the defendants were not interested in an investment agreement limited to UIH.

Consequently, defendants maintain they never finalized or approved any contract for UIH to acquire a 10% interest in the Hong Kong project in return for its knowledge, expertise, reputation and services. Moreover, while draft contracts were exchanged, no contract giving UIH a 10% interest in the cable TV and telecommunications project was ever signed. Nor did defendants ever promise or represent that UIH would be given such an interest.

To the contrary, defendants contend that the only contract they ever signed with UIH was a Technical Cooperation Agreement and it specifically stated that UIH would have no ownership interest in the cable television project. Instead, the Technical Cooperation Agreement provided UIH would be paid in quarterly cash payments for the services it supplied to Wharf. The Technical Cooperation Agreement also stated that any later agreements had to be in writing. Thus, defendants

contend that the only contract ever entered with UIH specifically denied UIH the right to a 10% interest.

Keep in mind that you are to consider claims asserted against three different defendants. In effect this means there are three separate cases being tried. You must give each case separate and distinct consideration.

INSTRUCTION NO. 2

EVIDENCE--GENERAL

I will instruct you on the law, and these instructions will control your deliberations.

It will be your duty to decide from the evidence what the facts are. You, and you alone, are the judges of the facts. You will hear the evidence, decide what the facts are, and then apply those facts to the law which I give you. That is how you will reach your verdict. In doing so, you must follow the law whether you agree with it or not.

At no time during the trial will I suggest what I think your verdict should be nor do I want you to guess or speculate about my views of what verdict you should render.

You will decide what the facts are from the evidence which the parties will present to you during the trial. That evidence will consist of the sworn testimony of witnesses on both direct and cross-examination, regardless of who called the witness; documents and other exhibits which have been received into evidence; and any facts on which the lawyers agree or which I may instruct you to accept as true.

The following things are <u>not</u> evidence and you must not consider them as evidence in deciding the facts of this case:

1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they say in their opening statements, closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of the facts controls.

2. Questions and objections by lawyers are not evidence. Lawyers have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by my ruling on it.

3. Testimony that is excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. In addition, if I allow some testimony or exhibits only for a limited purpose, you must consider such only for that limited purpose.

4. Anything you may see or hear when the court is not in session is not evidence. You are to decide the case solely on the evidence received during the trial.

You are to consider only the evidence in the case. But, in your consideration of the evidence, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from facts that you find have been proved, such reasonable inferences as seem justified in the light of your experience.

Inferences are deductions or conclusions your reason and common sense lead you to draw from the facts established by the evidence in the case.

INSTRUCTION NO. 3

EQUALITY OF PARTIES

All persons are equal before the law regardless of race, national origin, citizenship, or even whether the party is a corporation. I tell you that all parties are equal before the law to remind you that you must base any decision in this case on the law and facts, not outside factors such as race, national origin, citizenship, or corporate status.

INSTRUCTION NO. 4

STATUS OF A CORPORATION

All persons are equal before the law. A corporation is considered by the law to be a person. Corporations are entitled to the same fair and conscientious consideration by you as any physical person.

Corporations can act only through their directors, officers, and employees. Any act or omission of a director, officer, or employee while acting within the scope of his or her employment or authority is the act or omission of the corporation.

INSTRUCTION NO. 5

KNOWLEDGE OF A CORPORATION

Knowledge of, or notice to, a corporation's director, officer, or employee received while he or she is acting within the scope of his or her authority, is the knowledge of, or notice to, the corporation.

INSTRUCTION NO. 6

SCOPE OF AUTHORITY--DEFINED

A director, officer, or employee is acting within the scope of his or her authority when he or she is doing the work assigned by his or her employer, or is doing that which is proper, usual, and necessary to accomplish the assigned work, or is doing that which is customary in the particular trade or business to accomplish the assigned work.

INSTRUCTION NO. 7

APPARENT AUTHORITY–DEFINITION AND EFFECT

When a representative of a corporation, by words or conduct, has caused another person reasonably to believe that a director, officer, or employee has authority to take certain action on the corporation's behalf, although no such authority has in fact been given, the director, officer, or employee has apparent authority and may bind the corporation just as if the corporation had authorized such action.

INSTRUCTION NO. 8

BURDEN OF PROOF

This is a civil case. The plaintiff has the burden of proving its case by what is called a preponderance of evidence. That means that no matter who produces the evidence, when you consider the plaintiff's claims in light of all the facts, you believe that what the plaintiff claims is more likely true than not true.

In connection with the claim for breach of contract, the defendants have asserted the affirmative defense of intent not to be bound by an oral agreement. In connection with the claim of violation of sections 11-51-604(5)(b) of the Colorado Securities Act and Section 20(a) of the Securities Exchange Act, the defendants have asserted the affirmative defense of good faith. An affirmative defense is more than a denial of the plaintiff's case. You should treat the defendants' affirmative defenses in the same way you treat the plaintiff's claims. In other words, the defendants have the burden of proving that what they assert as affirmative defenses is more likely true than not true.

INSTRUCTION NO. 9

CREDIBILITY OF WITNESSES

In deciding the facts of this case, you will have to decide which witnesses to believe and which witnesses not to believe. You may believe everything a witness says, only part of it, or none of it.

In considering the testimony of any witness, you may consider:

1. The witness's opportunity and ability to see or hear or know the things to which the witness testified;

2. The quality of the witness's memory;

3. The witness's manner while taking the oath and while testifying;

4. Whether the witness had an interest in the outcome of the case or any motive, bias or prejudice;

5. Whether the witness's testimony is contradicted by anything the witness said or did at another time, by the testimony of other witnesses, or by other evidence;

6. How reasonable the witness's testimony was in light of all the evidence; and

7. Any other facts that bear on believability. The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify.

If you believe a witness has willfully lied regarding any material fact, you have the right to disregard all or any part of that witness's testimony.

INSTRUCTION NO. 10

EVIDENCE--DIRECT AND CIRCUMSTANTIAL

There are two kinds of evidence: direct and circumstantial. Direct evidence is testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence; that is, it is proof of one or more facts from which one can find that another fact exists or is true.

You should consider both kinds of evidence in deciding this case. It is for you to decide how much weight to give to any evidence, direct or circumstantial.

There are rules of evidence which control what can be received and considered by you. When one lawyer asks a question or offers an exhibit into evidence and another lawyer on the other side thinks doing so should not be allowed, that lawyer may object. If I overrule the objection, the question may be answered or the exhibit received. If I sustain the objection, the question cannot be answered or the exhibit received. Whenever I sustain an objection to a question, you must ignore the question and must not guess what the answer might have been.

Sometimes I may order evidence stricken from the record and order you to disregard or ignore it. That means when you are deciding the case, you may not take that evidence into consideration. I don't expect you to forget what has been stricken; I expect you consciously to ignore it.

INSTRUCTION NO. 11

DAMAGES--INTRODUCTION

If you find in favor of the plaintiffs, you must determine damages in accordance with these instructions. The fact I will instruct you on the measure of damages does not mean I am instructing you as to which party is entitled to your verdict or that I am instructing you to award or not award damages. The questions of whether or not damages are to be awarded, and the amount of such damages, are for your consideration alone.

If you decide to award damages, you should fix the amount using calm discretion and sound reason, not sympathy, prejudice, or speculation.

Difficulty or uncertainty in determining the precise amount of damages does not prevent you from deciding an amount. You should use your best judgment based on the evidence.

INSTRUCTION NO. 12

EXEMPLARY DAMAGES

In addition to compensation for its actual damages, UIH also seeks an award of punitive or exemplary damages based on the claim for fraud and breach of fiduciary duty.

If you find in favor of UIH and award actual damages on either the claim for fraud or the claim for breach of fiduciary duty, then you shall consider whether exemplary damages should be assessed against Wharf Holdings, Wharf Communications, and Stephen Ng, whichever of them caused the actual damage to UIH. If you find beyond a reasonable doubt that the injury complained of was attended by circumstances of fraud, malice, or willful and wanton conduct, then in addition to actual damages, you may also assess a reasonable sum as exemplary damages, not to exceed the amount awarded as actual damages.

"Reasonable doubt" means a doubt based upon reason and common sense which arises from a fair and thoughtful consideration of all of the evidence, or lack of evidence, in the case. It is not a vague, speculative, or imaginary doubt, but one that would cause reasonable persons to hesitate to act in matters of importance to themselves.

INSTRUCTION NO. 13

WILLFUL AND WANTON CONDUCT–DEFINED

"Willful and wanton conduct" means an act or omission purposefully committed by a person who must have realized that the conduct could cause damages to others, and was done heedlessly and recklessly, either without regard to the consequences, or without regard to the rights of others, particularly the plaintiffs.

INSTRUCTION NO. 14

JUROR CONDUCT

I will now say a few words about your conduct as jurors.

First, do not talk to each other about this case or about any witness until the end of the case when you go to the jury room to decide on your verdict.

Second, do not talk with anyone else about this case or about any witness until the trial has ended and you have been discharged as jurors. "Anyone else" includes members of your family and your friends. You may tell them that you are a juror in a case and that I have ordered you not to tell them anything else about the case until I have discharged you.

Third, do not let anyone talk to you about the case or about anyone who has anything to do with it. If someone tries to tak to you, please report it to me immediately.

Fourth, do not read any news stories or articles or listen to any radio or television reports about the case or about anyone who has anything to do with the case.

Fifth, do not do any research, such as consulting dictionaries or other reference materials, and do not make any investigation about the case on your own.

Sixth, do not make up your mind about what the verdict should be until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence. Keep an open mind until then.

Seventh, you are free to take notes in order to enhance your memory or assist you in recollecting during your

deliberations. I caution you, however, not to become a slave to your notes. It is important that you observe the witnesses and listen to their testimony. Your note taking should merely assist you.

INSTRUCTION NO. 15

DEPOSITIONAL TESTIMONY

Testimony can be read into evidence or shown by videotape from depositions. A deposition is testimony of a witness taken under oath before the trial and preserved in writing or on videotape. You are to give the same consideration to deposition testimony and you are to judge the credibility of the witness and weight of the testimony, to the best that such circumstances permit, as if the witness had been before you on the witness stand.

INSTRUCTION NO. 16

EXPERT WITNESSES

You will hear opinion evidence from several people described as experts. People who, by knowledge, skill, experience, training, or education, have become expert in some field may state their opinions on matters in that field and may also state the reasons for their opinions.

Expert opinion testimony should be judged just like any other testimony. You may accept it or reject it and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinions, and all of the other factors which you consider when determining the credibility of the other witnesses.

Experts generally rely upon some assumptions in developing their opinions. These assumptions are likewise subject to your evaluation and should be considered along with the rest of the evidence.

INSTRUCTION NO. 17

DECEIT BASED ON FRAUD--NATURE OF THE CLAIM

UIH asserts a claim for deceit based on fraud against Wharf Holdings, Wharf Communications, and Stephen Ng. This claim is based on allegations that these defendants made false representations of material fact to UIH and that these defendants failed to disclose to UIH material facts that were required to be disclosed. Wharf Holdings, Wharf Communications, and Stephen Ng deny this claim.

It is your responsibility to decide whether one or both of the plaintiffs have proved the claim for deceit based on fraud by a preponderance of the evidence against one or more of the defendants.

INSTRUCTION NO. 18

FALSE REPRESENTATION--ELEMENTS OF LIABILITY

In order for UIH to recover from Wharf Holdings, Wharf Communications, Stephen Ng, or any of them, on the claim of deceit based on fraud by a false statement, you must find that the following have been proved:

1. The defendant made a false representation of a past or present fact;

2. The fact was material;

3. The defendant made the representation knowing it to be false or was aware that it was without knowledge as to whether the representation was true or false;

4. The defendant made the representation with the intent that the plaintiff act in reliance on the representation;

5. The plaintiff relied on the representation;

6. The plaintiff's reliance was justified; and

7. That reliance caused damage to the plaintiff.

If you find that any one or more of these 7 propositions has not been proved by a preponderance of the evidence, then your verdict on the claim of deceit based on fraud by a false representation must be for the defendant.

On the other hand, if you find that the plaintiff has proved all of these 7 propositions by a preponderance of the evidence,

then your verdict on the claim of deceit based on fraud must be for the plaintiff.

INSTRUCTION NO. 19

NONDISCLOSURE OR CONCEALMENT--ELEMENTS OF LIABILITY

In order for UIH to recover from Wharf Holdings, Wharf Communications, Stephen Ng, or any of them, on the claim of deceit based on fraud by nondisclosure you must find that all of the following have been proved:

1. The defendant failed to disclose a past or present fact which it had a duty to disclose;

2. The fact was material;

3. The defendant failed to disclose the fact with the intent of creating in the mind of the plaintiff a false impression of the actual facts;

4. The defendant failed to disclose the fact with the intent that the plaintiff would take a course of action it might not take if it knew the actual facts;

5. The plaintiff took such action relying on the assumption that the undisclosed fact did not exist or was different from what it actually was;

6. The plaintiff's reliance was justified; and

7. That reliance caused damage to the plaintiff

If you find that any one or more of these 7 propositions has not been proved by a preponderance of the evidence, then your verdict on the claim of deceit based on fraud by a material omission must be for the defendant.

On the other hand, if you find that the plaintiff has proved all of these of 7 propositions by a preponderance of the evidence, then your verdict on the claim of deceit based on fraud must be for the plaintiff.

INSTRUCTION NO. 20

FALSE REPRESENTATION--DEFINED

A false representation is any oral or written word, conduct, or combination of words and conduct that creates an untrue or misleading impression in the mind of another.

A claim for false representation cannot be based on the mere nonperformance of a promise or contractual obligation or upon the failure to fulfill an agreement to do something at a future time. However, a promise to perform a future act or a statement of intention to do a future act is a false representation of a past or present fact if, at the time the promise or statement is made, the person did not then intend to perform the promise or carry out the stated intention.

INSTRUCTION NO. 21

MATERIAL FACT--DEFINED

A fact is material if a reasonable person under the circumstances would attach importance to it in determining his or her course of action.

INSTRUCTION NO. 22

FALSE REPRESENTATION--RELIANCE--DEFINED

UIH relied on the claimed representation if, believing it to be true, it took action it otherwise would not have taken.

INSTRUCTION NO. 23

NONDISCLOSURE--DUTY TO DISCLOSE

When dealing with UIH, Wharf Holdings, Wharf Communications, and Stephen Ng had a duty to disclose a material fact if it was known to the defendant and if:

1. Wharf Holdings, Wharf Communications, or both of them, were in a fiduciary relationship with UIH as a result of a joint venture as defined in Instruction No. 47; or

2. The defendant stated other facts which were true but which the defendant knew would create a false impression of the actual facts in the mind of UIH if the material fact was not disclosed; or

3. The defendant knew that by his or its own unclear or deceptive words or conduct the defendant had created a false impression of the actual facts in the mind of UIH; or

4. The defendant made a promise or stated an intention to perform a future act and there were other facts which the defendant did not disclose which made the performance of that future act unlikely.

INSTRUCTION NO. 24

JUSTIFIABLE RELIANCE–FALSE REPRESENTATION AND NONDISCLOSURE–DEFINED

When dealing with another person, one is justified in assuming, and may rely on the assumptions, that the other person is honest, and that the other person will not intentionally fail to disclose a past or present material fact which the other person knows and has a duty to disclose. However, one is not justified in relying on these assumptions if a person of the same or similar intelligence, education or experience would not so rely.

INSTRUCTION NO. 25

DECEIT BASED ON FRAUD--ACTUAL DAMAGES

If you find in favor of UIH on the claim of deceit based on fraud, you shall award as actual damages, insofar as they have been proved by a preponderance of the evidence, the difference between the value of the property as represented and the fair market value of the property as it actually was.

INSTRUCTION NO. 26

NEGLIGENT MISREPRESENTATION–NATURE OF THE CLAIM

UIH asserts a claim for negligent misrepresentation against Wharf Holdings and Wharf Communications. Wharf Holdings and Wharf Communications deny this claim.

It is your responsibility to decide whether the plaintiff has proved the claim for negligent misrepresentation against one or more of the defendants.

INSTRUCTION NO. 27

NEGLIGENT MISREPRESENTATION CAUSING FINANCIAL LOSS IN A BUSINESS TRANSACTION– ELEMENTS OF LIABILITY

In order for UIH to recover from Wharf Holdings or Wharf Communications, or both of them, on the claim of negligent misrepresentation, you must find all of the following have been proved:

1. The defendant gave false information to the plaintiff;

2. The defendant gave such information to the plaintiff in the course of a transaction in which the defendant had a financial interest;

3. The defendant gave the information to the plaintiff for the use of the plaintiff in a business transaction with a person other than the defendant;

4. The defendant was negligent in obtaining or communicating the information;

5. The defendant gave the information with the intent or knowledge that the plaintiff would act in reliance on the information;

6. The plaintiff relied on the information supplied by the defendant; and

7. This reliance on the information supplied by the defendant caused damage to the plaintiff.

If you find that any one or more of these seven propositions has not been proved by a preponderance of the evidence, then your verdict on the claim for negligent misrepresentation must be for the defendant.

On the other hand, if you find that all of these seven propositions have been proved by a preponderance of the evidence, then your verdict on the claim for negligent misrepresentation must be for the plaintiff.

INSTRUCTION NO. 28

NEGLIGENCE--DEFINED

Negligence in this case means a failure to do an act which a reasonably careful person would do, or the doing of an act which a reasonably careful person would not do, under the same or similar circumstances to protect others from financial loss.

INSTRUCTION NO. 29

NEGLIGENT MISREPRESENTATION--ACTUAL DAMAGES

If you find in favor of UIH on the claim for negligent misrepresentation, you shall award as the actual damages, if proved by a preponderance of the evidence and insofar as they were caused by the misrepresentation, the value of what the plaintiff provided minus the value of what the plaintiff received in return.

INSTRUCTION NO. 30

BREACH OF CONTRACT--NATURE OF THE CLAIM

UIH asserts a claim for breach of contract against Wharf Holdings and Wharf Communications. Wharf Holdings and Wharf Communications deny this claim.

It is your responsibility to decide whether the plaintiff has proved the claim for breach of contract by a preponderance of the evidence against one or more of the defendants.

INSTRUCTION NO. 31

BREACH OF CONTRACT–ELEMENTS OF LIABILITY

In order for UIH to recover from Wharf Holdings or Wharf Communications, or both of them, on the claim for breach of contract, you must find that all of the following have been proved:

1. The defendant entered into a contract with the plaintiff under which UIH had the option to purchase a 10% ownership interest in the Hong Kong cable project;

2. There were no unfulfilled or unexcused conditions precedent to the defendant's duty to perform the contract; and

3. The defendant refused to allow the plaintiff to exercise the option to purchase a 10% ownership interest in the Hong Kong cable project.

If you find that any one or more of these three propositions has not been proved by a preponderance of the evidence, then your verdict on the claim for breach of contract must be for the defendant.

On the other hand, if you find that both of these propositions have been proved by a preponderance of the evidence, then your verdict on the claim for breach of contract must be for the plaintiff, unless you should also find that the defendant has proved, by a preponderance of the evidence, the affirmative defense of intent to have a written contract, in which event your verdict must be for the defendant.

INSTRUCTION NO. 32

ENFORCEABILITY OF AN ORAL CONTRACT

A contract may be either written or oral. Both written and oral contracts are enforceable.

INSTRUCTION NO. 33

ELEMENTS OF A CONTRACT

The elements UIH must prove to establish that the parties entered into a contract are:

1. An offer;

2. An acceptance; and

3. Consideration.

INSTRUCTION NO. 34

OFFER

An offer is a proposal which by its terms is intended to become binding if the party to whom it is made accepts it. An offer can contain certain requirements that must occur before it can be accepted.

INSTRUCTION NO. 37

ACCEPTANCE

The acceptance of an offer must be of the identical terms of the offer, without any changes whatsoever. If the claimed acceptance changes the offer in any way, it amounts to a counter offer and is not an acceptance that will result in a contract.

INSTRUCTION NO. 36

CONSIDERATION

For a contract to exist, it is necessary that it be supported by consideration. If you find that in exchange for the option, UIH promised to provide any services to the defendant, then you must find that there was consideration.

If the plaintiff, however, did or promised to do nothing more than it was already obligated to do, or was working voluntarily for its own benefit, then no consideration is present and you must find for the defendants.

INSTRUCTION NO. 37

MEETING OF THE MINDS

For a contract to exist, each party to the contract must have understood and agreed to the essential terms of the claimed contract. That understanding and agreement, if any, may be inferred from the contracting parties' conduct, statements and writings. If you find, however, that the parties merely discussed entering into a contract in the future, then you may not find that a contract was formed. Such an "agreement to agree" would not be enforceable because courts cannot force parties to enter into a binding contract.

INSTRUCTION NO. 38

CERTAINTY

Whether it is in writing or oral, for a contract to exist all of the essential terms of the contract must be sufficiently definite and complete to permit the parties to know and understand their rights and duties under the contract. If the essential terms are not definite and complete, there is no contract.

If the parties have agreed to all essential terms, a binding contract exists even though the parties may have agreed to negotiate other additional terms.

INSTRUCTION NO. 39

INTENT TO HAVE A WRITTEN CONTRACT– BURDEN OF PROOF

Whether the parties are bound to an oral contract before it is put into writing and signed depends on the intent of the parties. In determining that intent, you may consider only the parties' conduct, statements, and writing. You should not consider any hidden or secret intent of the parties.

A party cannot be bound by an alleged oral contract if it does not intend to be bound until a formal written contract is signed by the parties. Defendants contend that they never intended to be bound under a contract with the plaintiff until a formal written document was signed by both parties.

If you find that plaintiff has proved the existence of an oral contract, that contract is not enforceable if the defendants prove either:

1. That both parties understood they were not to be bound until the contract was put in writing and signed; or

2. That the plaintiff should have known that the defendants did not intend to be bound before the contract was put in writing and signed.

In determining whether the plaintiff should have known that the defendants did not intend to be bound to a contract unless it was in writing and signed, you should consider the following:

1. Whether the parties have stated an intention not to be bound absent a written contract;

2. Whether one party has acted partially under the contract and the other party has accepted the performance;

3. Whether there were issues that remained to be negotiated or whether signing the written contract was merely ministerial; and

4. Whether the agreement concerns complex business matters such that a written agreement would be the normal or expected, not the exception.

INSTRUCTION NO. 40

IMPACT OF "TECHNICAL COOPERATION AGREEMENT"

On September 25, 1992, UIH and Wharf Cable Limited signed a document entitled "Technical Cooperation Agreement" ("TCA"). The parties dispute whether the TCA was ever intended to be an operative agreement.

Regardless of what you find the evidence to show on this issue, I instruct you as a matter of law that nothing in the TCA precluded UIH from entering into an oral contract with Wharf Holdings, Wharf Communications or both of them under which the plaintiff allegedly obtained the option or right to purchase an equity interest in the cable franchise. Likewise, nothing in the TCA precludes the existence of a joint venture between either plaintiff and Wharf Holdings, Wharf Communications or both of them.

However, you may consider the TCA in determining whether the parties intended to be bound without the signing of a formal written agreement.

INSTRUCTION NO. 41

There is no Instruction No. 41.

INSTRUCTION NO. 42

CONDITIONS PRECEDENT TO PERFORMANCE OF A CONTRACT

If you find that a contract existed between UIH on the one hand, and Wharf Holdings or Wharf Communications, or both of them, on the other hand, you must consider whether there were any conditions precedent to the defendant's duty to perform the contract. A condition precedent is an event, not certain to occur at the time the contract was formed, which must occur or be excused before performance under a contract becomes due.

Wharf Holdings and Wharf Communications claim the following conditions precedent to their duty to perform the contract:

1. Execution of a definitive written agreement spelling out all material terms and conditions of the contract;

2. Approval by the boards of directors of all participants;

3. Agreement for participation in the project by NYNEX or a similar third party; and

4. That UIH demonstrate that it had the financial capability to fund the project on an initial and a going-forward basis.

If you find that there was at least one condition precedent and that it was never performed or fulfilled, you must consider whether it was excused.

The performance of a condition precedent is excused, and the defendant is obligated to perform the contract, if:

1. Words or conduct of the defendant reasonably led the plaintiff to believe that performance of the condition would be a futile act; or

2. The defendant prevented or hindered the occurrence of the condition through a breach of the duty of good faith and fair dealing, which was owed under the contract; or

3. The defendant repudiated the contract before the occurrence of the condition was due. UIH bears the burden of proving that there were no unfulfilled or unexcused conditions precedent to the defendant's duty to perform the contract.

If you find that there was one or more conditions precedent to the defendant's duty to perform the contract; that any condition was not performed or fulfilled; and that the performance of the condition was not excused, then your verdict on the claim for breach of contract must be for the defendant.

INSTRUCTION NO. 43

REPUDIATION--DEFINED

A repudiation exists where the party who is claimed to have repudiated the contract has shown by words or conduct, or both, a clear and definite intention not to perform the contract.

INSTRUCTION NO. 44

DAMAGES

If you find in favor of UIH on its claim of breach of contract, then you must award actual or nominal damages.

To award actual damages, you must find by a preponderance of the evidence that the plaintiff incurred actual damages as a result of the breach, and the amount thereof.

To the extent that actual damages have been proved by the evidence, you shall award as actual damages the amount necessary to place the plaintiff in the position it would have enjoyed had the breach not occurred; that is, you shall award plaintiff the benefit of its bargain with the defendant.

If you find in favor of the plaintiff, but do not find any actual damages, you shall nonetheless award the plaintiff nominal damages in the sum of one dollar.

INSTRUCTION NO. 45

BREACH OF FIDUCIARY DUTY--NATURE OF THE CLAIM

UIH asserts a claim for breach of fiduciary duty against Wharf Holdings and Wharf Communications. Wharf Holdings and Wharf Communications deny this claim.

You must decide whether the plaintiff has proved the claim for breach of fiduciary duty by a preponderance of the evidence against one or more of the defendants.

INSTRUCTION NO. 46

BREACH OF FIDUCIARY DUTY–ELEMENTS OF LIABILITY

In order for UIH to recover from Wharf Holdings or Wharf Communications on the claim for breach of fiduciary duty, you must find that all of the following have been proved:

1. The defendant was a joint venturer with the plaintiff in the Hong Kong cable project;

2. The defendant breached the fiduciary duty that it owed the plaintiff as a joint venturer;

3. The plaintiff incurred losses or damages; and

4. The defendant's breach of fiduciary duty was a cause of the plaintiff's losses or damages.

If you find that any one or more of these 4 propositions has not been proved by a preponderance of the evidence, then your verdict on the plaintiff's claim for breach of fiduciary duty must be for the defendant.

On the other hand, if you find that all of these 4 propositions have been proved by a preponderance of the evidence, then your verdict on the claim for breach of fiduciary duty must be for the plaintiff.

INSTRUCTION NO. 47

JOINT VENTURE--DEFINED

Three elements must exist to establish a joint venture:

(1) A joint interest in property;

(2) An express or implied agreement to share in the losses or profits of the venture; and

(3) Conduct showing cooperation in the venture.

A joint interest in property arises when the parties agree to commit their property, money, credit, labor, or skills to the venture.

An agreement to share in the losses or profits of a venture need not be set forth in a formal agreement between the parties. Rather, the existence of the joint venture may be shown by the parties' conduct and other factors from which it appears that a joint venture relationship was, in fact, entered into.

INSTRUCTION NO. 48

DUTIES OF A FIDUCIARY--DEFINED

A joint venturer must act with the utmost good faith and loyalty on behalf of, and for the benefit of, its co-venturer and owes its co-venturer a fiduciary duty of fair, open, and honest disclosure.

INSTRUCTION NO. 49

CAUSE - DEFINED

The word "cause" as used in these instructions means an act or failure to act which in natural and probable sequence produced the claimed injury. It is a cause without which the claimed damage would not have been incurred.

INSTRUCTION NO. 50

BREACH OF FIDUCIARY DUTY--ACTUAL DAMAGES

If you find in favor of UIH on the claim for breach of fiduciary duty, you shall award as actual damages, if proved by a preponderance of the evidence and insofar as they were caused by the breach of fiduciary duty, an amount which will reasonably compensate the plaintiff for its losses, if any.

In determining such damages, you shall consider any economic losses incurred to the present time or which will probably be incurred in the future, including anything of value or any profit the defendant received as a result of the breach of fiduciary duty.

INSTRUCTION NO. 51

SECURITIES LAWS VIOLATIONS--NATURE OF THE CLAIM

UIH asserts claims for violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 of the Securities and Exchange Commission and for violations of section 11-51-604(3) of the Colorado Securities Act against Wharf Holdings, Wharf Communications, and Stephen Ng. Wharf Holdings, Wharf Communications, and Stephen Ng deny these claims.

You must decide whether one or both plaintiffs have proved these claims by a preponderance of the evidence against one or more of the defendants.

INSTRUCTION NO. 52

SECURITIES LAWS VIOLATIONS--ELEMENTS OF LIABILITY

In order for UIH to recover from Wharf Holdings, Wharf Communications, and Stephen Ng, or any of them, for a securities law violation, the plaintiff must establish each of the following elements by a preponderance of the evidence:

1. That in connection with a "sale of securities" to the plaintiff, the defendant either (a) employed a device, scheme, or artifice to defraud; (b) made a "misrepresentation" or "omission" of a "material fact"; or (c) engaged in an act, practice, or course of business that operated as a fraud or deceit upon the plaintiff;

2. That the defendant acted knowingly;

3. That the plaintiff justifiably relied on the alleged misrepresentation or omission; and

4. That the plaintiff suffered damages as a result of the defendant's conduct.

In considering these elements, you should refer to the definitions and explanations that follow this instruction.

If you find that any of these 4 propositions has not been proved by a preponderance of the evidence, then your verdict on the claims for securities laws violations must be for the defendant.

On the other hand, if you find that all 4 of these propositions have been proved by a preponderance of the

evidence, then your verdict on the claims for securities laws violations must be for the plaintiff.

INSTRUCTION NO. 53

DEFINITION OF SALE

A "sale of securities" includes an actual sale of securities as well as a contract to sell securities in the future, also known as an option.

INSTRUCTION NO. 54

CONDUCT PROHIBITED--"MISREPRESENTATION" OR "OMISSION" OF "MATERIAL FACT"

A "misrepresentation" for the purposes of Rule 10b-5 liability is an untrue statement of material fact. An "omission" is the failure to disclose a material fact that had to be disclosed to keep other statements that were made from being misleading.

A statement is not false or misleading merely because later events prove it to have been erroneous. Whether statements or omissions are false or misleading must be determined as of the time they were made.

A "material fact" is one that a reasonable investor would consider important in making an investment decision.

INSTRUCTION NO. 55

KNOWINGLY--DEFINED

The plaintiff must also establish that the defendant acted "knowingly." The term "knowingly" relates to the defendant's state of mind and embraces an intent to deceive, manipulate or defraud.

UIH may prove a defendant acted "knowingly" by proving the defendant made a misstatement or omission of a material fact with a reckless disregard for whether it was true or false. Reckless behavior is conduct that is an extreme departure from the standards of ordinary care and which presents a danger of misleading a buyer that is either known to the defendant or so obvious that the defendant must have been aware of that danger.

It is not enough for the plaintiff to show that the defendant acted accidentally, mistakenly, or negligently. Plaintiff must show that, at the time the misrepresentation or omission was made, defendant's state of mind was to deceive, manipulate or defraud.

A defendant's state of mind may be inferred from his acts and words given all of the surrounding circumstances at the time.

INSTRUCTION NO. 56

JUSTIFIABLE RELIANCE--DEFINED

The plaintiff must also prove that it relied on the alleged misrepresentation or omission and that it was justified in doing so.

In considering whether the plaintiff's reliance was justified you should consider the following factors:

1. The sophistication and expertise of the plaintiff in financial and securities matters;

2. The existence, if any, of long standing business or personal relationships between the parties;

3. Access to the relevant information;

4. The generality or specificity of the misrepresentations;

5. The existence of a fiduciary relationship;

6. Concealment of the fraud; and

7. The opportunity to detect the fraud.

If you find that the plaintiff would have engaged in the transaction anyway, and that the misrepresentation or omission had no effect upon its decision, then there was no reliance and the plaintiff has not satisfied this element.

INSTRUCTION NO. 57

CAUSATION--DEFINED

The plaintiff must also establish that it suffered damages as the result of the wrongful conduct. Therefore, if you find that the defendant made or caused to be made a materially untrue statement or omission, you must consider whether the plaintiff's damages were "proximately" caused by such a statement or omission.

The plaintiff is not required to show that the untrue statement or omission was the sole and exclusive cause of its damages. Instead, plaintiff must show that, but for the untrue statement or omission, its damages would not have occurred.

INSTRUCTION NO. 58

DUTY

Wharf Holdings and Wharf Communications, as corporations, are responsible for the statements made by their directors, officers, employees, and agents in the course of their duties. Consequently, if you find that any director, officer, employee, or agent of Wharf Holdings or Wharf Communications made a material untrue statement or omission, or supplied information for a statement made by the corporation which was materially untrue or omitted a material fact, then you must find that Wharf Holdings or Wharf Communications made a material misrepresentation or omission.

INSTRUCTION NO. 59

SECURITIES LAWS VIOLATIONS--ACTUAL DAMAGES

If you find in favor of UIH on its claims for securities fraud under Rule l0b-5 or Colorado Revised Statutes § 11-51-604(3), you shall award, as actual damages if they have been proved by a preponderance of the evidence and insofar as they were caused by the violation, an amount equal to the difference, if any, between the value of the option as represented and the fair market value of the option as it actually was.

INSTRUCTION NO. 60

"CONTROLLING PERSON" VIOLATION–NATURE OF THE CLAIM

UIH asserts claims for violation of Section 20(a) of the Securities Exchange Act of 1934 and section 11-51-604(5)(b) of the Colorado Securities Act against Wharf Holdings and Wharf Communications as "controlling persons." As the sole shareholder of Wharf Communications and as Stephen Ng's employer, Wharf Holdings may be a "controlling person" and therefore be jointly liable for Wharf Communications and Stephen Ng's violations of securities laws, if any. Similarly, as Stephen Ng's employer, Wharf Communications may be a "controlling person" and therefore be jointly liable for Stephen Ng's violation of securities laws, if any. Wharf Holdings and Wharf Communications deny these claims.

You must decide whether the plaintiffs have proved these claims by a preponderance of the evidence against the defendants.

INSTRUCTION NO. 61

CONTROLLING PERSON–ELEMENTS OF LIABILITY

In order for UIH to recover against Wharf Holdings, Wharf Communications, or both of them, on the controlling person claims, you must find that both of the following have been proved:

1. That Wharf Communications or Stephen Ng, or both of them, committed a violation of the securities laws; and

2. That Wharf Holdings, Wharf Communications, or both of them, had direct or indirect control over the management or policies of the party that committed the violation. A showing that the controlling person was an actual or culpable participant in the violation is not required.

If you find that either of these propositions has not been proved by a preponderance of the evidence, then your verdict on the controlling person claim must be for the defendant.

On the other hand, if you find that both of these propositions have been proved by a preponderance of the evidence, then your verdict on the claims for controlling person liability must be for the plaintiff, unless you should also find that the defendant has proved, by a preponderance of the evidence, that it acted in good faith and did not, directly or indirectly, induce the violations, in which case your verdict must be for the defendant.

INSTRUCTION NO. 62

DAMAGES

If you find in favor of either or both plaintiffs on their "controlling person" claims, then the defendant is liable to the plaintiff or plaintiffs to the same extent as the party it controlled, either Stephen Ng and/or Wharf Communications.

INSTRUCTION NO. 63

There is no Instruction No. 63.

INSTRUCTION NO. 64

JURY--REACHING A VERDICT

I have instructed you on the law applicable to this case.

Each of you has a copy of the instructions to consult as you find it necessary. You may take your copy with you to your deliberations.

It is your duty to find the facts from all the evidence in the case. To those facts, you must apply and follow the law as I give it to you whether you agree with it or not. You must base your verdict upon the evidence. You must not be influenced by any personal likes or dislikes, opinions, prejudices or sympathy. That means you must decide the case solely on the evidence before you and according to the law as I give it to you. You have taken an oath promising to do just so.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. You must not read into these instructions or into anything I may say or do any suggestions as to what verdict you should return. Your verdict is a matter entirely for you to decide.

INSTRUCTION NO. 65

EVIDENCE – EXCLUDED

In reaching your verdict you may consider only the testimony and exhibits received into evidence. The following things are not evidence and you may not consider them in deciding what the facts are:

1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they say in their opening statements, closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of the facts controls.

2. Questions and objections by lawyers are not evidence. Lawyers have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by my ruling on it.

3. Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. In addition, I have allowed some testimony or exhibits only for a limited purpose, and you must consider such only for that limited purpose.

4. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received during the trial.

INSTRUCTION NO. 66

JURY--DELIBERATIONS

When you go to the jury room to begin your deliberations, you must elect one member of the jury as your foreman. He or she will preside over your deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict, but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

INSTRUCTION NO. 67

JURY--UNANIMOUS VERDICT

After you have reached unanimous agreement on a verdict, your foreman will fill in and date each of the Jury Verdict Forms that have been given to you. Your foreman and all jurors should then sign each of the forms and advise the court security officer stationed outside the jury room that you have reached a verdict.

INSTRUCTION NO. 68

JURY--COMMUNICATION WITH THE JUDGE

If it becomes necessary during your deliberations to communicate with me, you may send a folded note through the court security officer, signed by one of you. Do not disclose the content of your note to the court security officer. No member of the jury should ever attempt to communicate with me except by a signed writing; and I will communicate with any member of the jury on anything concerning the case only in writing, or orally here in open court. You are not to tell anyone--including me--how the jury stands, numerically or otherwise, until you have reached a unanimous verdict or I have discharged you.

If you do send a note to me containing a question or request for further direction, please bear in mind that a response takes considerable time and effort. Before giving you an answer or direction I must first notify counsel and bring them back to the court. I must confer with them, listen to arguments, research the legal authorities, if necessary, and reduce the answer or direction to writing. In some instances jurors request that certain testimony be read to them. This cannot be done as it is inappropriate for the court to single out testimony. In those circumstances you must rely upon your own recollection.

INSTRUCTION NO. 69

MULTIPLE RECOVERY PROHIBITED

A plaintiff in a civil action may recover only once for the same injury, even though it seeks an award of damages for that injury under several theories of relief. For example, a plaintiff who lost $100 as a result of defendant's conduct may recover only $100, even if plaintiff sought $100 in damages from defendant on one claim, and $100 in damages from defendant on a different claim.

In this case, UIH is seeking damages under six different theories of relief: fraud; negligent misrepresentation; breach of contract; securities fraud; control person liability; and breach of fiduciary duty. Under the rule prohibiting multiple recovery, UIH may recover its damages only once, even if you return verdicts in UIH's favor on more than one of its claims for relief.

I am instructing you on the rule prohibiting multiple recovery so that you will be aware of the law on this issue. It is I, rather than you, however, who will apply the rule. You are specifically instructed to consider each of UIH's claims independently. That is, you are to consider each of these claims as though it were the only claim in this case. If you find in favor of UIH on anyone of its claims, you are to write in an award of damages on that claim without regard to your finding for or against UIH on any other claim. I will apply the rule when I issue my judgment on your verdicts, whatever they may be.

Perhaps it bears repeating that nothing in this or any other instruction is meant to suggest what your finding on any or all claims should be. My instructions on damages are only to be applied in the event you find liability.

INSTRUCTION NO. 70

JURY VERDICT FORMS–INSTRUCTION

You are instructed to answer the questions set out on each of the 4 attached Jury Verdict Forms. There is a separate Jury Verdict Form for each of the three defendants, and a fourth Jury Verdict Form on the issue of Controlling Person Liability. You must all agree on the answers to each of the questions. Upon arriving at an agreement, your foreman will insert your answers on the verdict forms, date them, and then he or she and all other jurors will sign them.

Jury Instructions re: Breach of Fiduciary Duty

April 23, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 10381:13-10383:17;

Transcript 8162:13-8164:17)

Jury Instructions re: Breach of Fiduciary Duty

April 23, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 10381:13-10383:17;

Transcript 8162:13-8164:17)

UIH asserts a claim for breach of fiduciary duty against Wharf Holdings and Wharf Communications. Wharf Holdings and Wharf Communications deny this claim. You must decide whether the plaintiff has proved a claim for breach of fiduciary duty by a preponderance of the evidence against one or more of the defendants.

In order for UIH to recover from Wharf Holdings or Wharf Communications on the claim for breach of fiduciary duty, you must find that all of the following have been proved. One, the defendant was a joint venturer with the plaintiff in the Hong Kong cable project. Two, the defendant breached the fiduciary duty that it owed to plaintiff as a joint venturer. Three, the plaintiff incurred losses or damages. And, four, the defendants' breach of fiduciary duty was a cause of the plaintiff's losses or damages.

If you find that any one or more of these propositions has not been proved by a preponderance of the evidence, then your verdict on the plaintiff's claim for breach of fiduciary duty must be for the defendant. On the other hand, if you find that all of these four propositions have been proved by a preponderance of the evidence, then your verdict on the claim for breach of fiduciary duty must be for the plaintiff.

Three elements must exist to establish a joint venture; a joint interest in property, an express or implied agreement to share in the losses or profits of the venture and, three, conduct showing cooperation in the venture. A joint interest in property arises when the parties agree to commit their property, money, credit, labor or skills to the venture. An agreement to share in the losses or profits of a venture need not be set forth in a formal agreement between the parties. Rather, the existence of the joint venture may be shown by the parties' conduct and other factors from which it appears that a joint venture relationship was in fact entered into.

A joint venturer must act with the utmost good faith and loyalty on behalf of and for the benefit of its co-venturer, and owes its co-venturer a fiduciary duty of fair, open and honest disclosure.

The word "cause" as used in these instructions means an act or a failure to act, which in natural and probable sequence produced the claimed injury. It is a cause without which the claimed damage would not have been incurred.

If you find in favor of UIH on the claim for breach of fiduciary duty, you shall award as actual damages, if proved by a preponderance of the evidence, and insofar as they were caused by the breach of fiduciary duty, an amount which will reasonably compensate the plaintiff for its losses, if any.

In determining such damages, you shall consider any economic losses incurred to the present time, or which will probably be incurred in the future, including anything of value or any profit the defendant received as a result of the breach of fiduciary duty.

APPENDIX EO

Jury Instructions re: Contract Consideration
April 23, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 10376:08-10376:15;
Transcript 8157:08-8157:15)

Jury Instructions re: Contract Consideration
April 23, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 10376:08-10376:15;
Transcript 8157:08-8157:15)

For a contract to exist, it is necessary that it be supported by consideration. If you find that in exchange for the option, UIH promised to provide any services to the defendant, then you must find that there was consideration. If the plaintiff, however, did or promised to do nothing more than it was already obligated to do, or was working voluntarily for its own benefit, then no consideration is present and you must find for the defendants.

APPENDIX EP

Jury Verdict Forms

April 29, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 1563-91)

JURY VERDICT FORM 1 -- WHARF HOLDINGS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 94-K-2560

UNITED INTERNATIONAL HOLDINGS INC., et al.,

Plaintiffs,

vs.

THE WHARF (HOLDINGS) LIMITED, et al.,

Defendants.

JURY VERDICT FORM 1 -- DEFENDANT THE WHARF (HOLDINGS) LIMITED

We, the jury, present our Answers to Questions submitted by the Court, to which we have all agreed.

¶ A. **Deceit Based on Fraud**. With regard to the claim of UIH for deceit based on fraud against Defendant The Wharf (Holdings) Limited:

1. Do you find that Wharf Holdings either:

   (a) Made a false representation which at the time made concerned a past or present fact (see Instruction No. 20); or

(b) Failed to disclose a past or present fact which it had a duty to disclose? (See Instruction No. 23.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 1 IS YES, GO ON TO QUESTION NO. 2. IF YOUR ANSWER IS NO, SKIP TO ¶ B.

2. Do you find that the fact was material? (See Instruction No. 21.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 2 IS YES, GO ON TO QUESTION NO. 3. IF YOUR ANSWER IS NO, SKIP TO ¶ B.

3. Do you find that Wharf Holdings either:

(a) Made the representation knowing it to be false or was aware that it was without knowledge as to whether the representation was true or false: or

(b) Failed to disclose the fact with the intent of creating in the mind of UIH a false impression of the actual facts?

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 3 IS YES, GO ON TO QUESTION NO. 4. IF YOUR ANSWER IS NO, SKIP TO ¶ B.

4. Do you find that Wharf Holdings either:

   (a) Made the representation with the intent that UIH act in reliance on the representation; or

   (b) Failed to disclose the fact with the intent that UIH would take a course of action it might not take if it knew the actual facts?

   _X_ YES
   ___ NO

   IF YOUR ANSWER TO QUESTION NO. 4 IS YES, GO ON TO QUESTION NO. 5. IF YOUR ANSWER IS NO, SKIP TO ¶ B.

5. Do you find that UIH either:

   (a) Relied on the representation; or

   (b) Took action relying on the assumption that the undisclosed fact did not exist or was different from what it actually was? (See Instruction No. 22.)

   _X_ YES
   ___ NO

   IF YOUR ANSWER TO QUESTION NO. 5 IS YES, GO ON TO QUESTION NO. 6. IF YOUR ANSWER IS NO, SKIP TO ¶ B.

6. Do you find that UIH's reliance was justified? (See Instruction No. 24.)

   _X_ YES
   ___ NO

   IF YOUR ANSWER TO QUESTION NO. 6 IS YES, GO ON TO QUESTION NO. 7. IF YOUR ANSWER IS NO, SKIP TO ¶ B.

7. Do you find that this reliance caused damage to UIH?

   _X_ YES
   ___ NO

   IF YOUR ANSWER TO QUESTION NO. 7 IS YES, GO ON TO QUESTION NO. 8. IF YOUR ANSWER IS NO, SKIP TO ¶ B.

8. What amount of damages do you award UIH? (See Instruction No. 25.)

   $67,000,000.00

   PLEASE GO ON TO QUESTION NO. 9.

9. Do you find that Wharf Communication's actions were attended by circumstances of fraud, malice, or willful and wanton conduct? (See Instructions No. 12-13.)

   _X_ YES
   ___ NO

IF YOUR ANSWER TO QUESTION NO. 9 IS YES, GO ON TO QUESTION NO. 10. IF YOUR ANSWER IS NO, SKIP TO ¶ B.

10. What amount of exemplary damages do you award UIH? (See Instruction No. 12.)

$58,500,000.00

PLEASE GO ON TO ¶ B.

¶ B. **Negligent Misrepresentation**. With regard to the claim of UIH for negligent misrepresentation against Defendant The Wharf (Holdings) Limited:

11. Do you find that Wharf Holdings gave false information to UIH?

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 11 IS YES, GO ON TO QUESTION NO. 12. IF YOUR ANSWER IS NO, SKIP TO ¶ C.

12. Do you find that Wharf Holdings save such information to UIH in the course of a transaction in which Wharf Holdings had a financial interest?

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 12 IS YES, GO ON TO QUESTION NO. 13. IF YOUR ANSWER IS NO, SKIP TO ¶ C.

13. Do you find that Wharf Holdings gave the information to UIH for use in a business transaction with a person or entity other than Wharf Holdings?

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 13 IS YES, GO ON TO QUESTION NO. 14. IF YOUR ANSWER IS NO, SKIP TO ¶ C.

14. Do you find that Wharf Holdings was negligent in obtaining or communicating the information? (See Instruction No. 28.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 14 IS YES, GO ON TO QUESTION NO. 15. IF YOUR ANSWER IS NO, SKIP TO ¶ C.

15. Do you find that Wharf Holdings gave the information with the intent or knowing that UIH would act in reliance on the information?

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 15 IS YES, GO ON TO QUESTION NO. 16. IF YOUR ANSWER IS NO, SKIP TO ¶ C.

16. Do you find that UIH relied on the information?

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 16 IS YES, GO ON TO QUESTION NO. 17. IF YOUR ANSWER IS NO, SKIP TO ¶ C.

17. Do you find that reliance on the information supplied by Wharf Holdings caused damage to UIH?

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 17 IS YES, GO ON TO QUESTION NO. 18. IF YOUR ANSWER IS NO, SKIP TO ¶ C.

18. What amount of damages do you award UIH? (See Instruction No. 29.)

$8,100,000.00

PLEASE GO ON TO ¶ C.

¶ C. **Breach of Contract.** With regard to the claim of UIH for breach of contract against The Wharf (Holdings) Limited:

19. Do you find that Wharf Holdings entered into a contract with UIH granting an option to purchase a 10% ownership interest in the Hong Kong cable project? (See Instructions No. 31-40.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 19 IS YES, GO ON TO QUESTION NO. 20. IF YOUR ANSWER IS NO, SKIP TO ¶ D.

20. Do you find that the conditions precedent, if any, to Wharf Holdings' obligation to perform the contract have been fulfilled or excused? (See Instructions No. 42-43.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 20 IS YES, GO ON TO QUESTION NO. 21. IF YOUR ANSWER IS NO, SKIP TO ¶ D.

21. Do you find that Wharf Holdings refused to allow UIH to exercise the option to purchase a 10% ownership interest in the Hong Kong cable project?

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 21 IS YES, GO ON TO QUESTION NO. 22. IF YOUR ANSWER IS NO, SKIP TO ¶ D.

22. Do you find that Wharf Holdings has proven either:

(a) That UIH and Wharf Holdings understood they were not to be bound by the oral contract until it was put in writing and signed; or

(b) That UIH should have known that Wharf Holdings did not intend to be bound before the

contract was put in writing and signed? (See Instruction No. 39.)

___ YES
_X_ NO

IF YOUR ANSWER TO QUESTION NO. 22 IS NO, GO ON TO QUESTION NO. 23. IF YOUR ANSWER IS YES, SKIP TO ¶ D.

23. What amount of damages do you award UIH? (See Instruction No. 44.)

$67,000,000.00

PLEASE GO ON TO ¶ D.

¶ D. **Breach of Fiduciary Duty.** With regard to the claim of UIH for breach of fiduciary duty against Defendant The Wharf (Holdings) Limited:

24. Do you find that Wharf Holdings and UIH were in a joint venture? (See Instruction No. 47.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 24 IS YES, GO ON TO QUESTION NO. 25. IF YOUR ANSWER IS NO, SKIP TO ¶ E.

25. Do you find that Wharf Holdings breached its fiduciary duty to UIH? (See Instruction No. 48.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 25 IS YES, GO ON TO QUESTION NO. 26. IF YOUR ANSWER IS NO, SKIP TO ¶ E.

26. Do you find that UIH incurred damages?

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 26 IS YES, GO ON TO QUESTION NO. 27. IF YOUR ANSWER IS NO, SKIP TO ¶ E.

27. Do you find that Wharf Holdings' breach of fiduciary duty, was a cause of UIH damages? (See Instruction No. 49.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 27 IS YES, GO ON TO QUESTION NO. 28. IF YOUR ANSWER IS NO, SKIP TO ¶ E.

28. What amount of damages do you award UIH? (See Instruction No. 50.)

$67,000,000.00

PLEASE GO ON TO QUESTION NO. 29.

29. Do you find that Wharf Holdings' actions were attended by circumstances of fraud, malice, or willful and wanton conduct? (See Instructions No. 12-13.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 29 IS YES, GO ON TO QUESTION NO. 30. IF YOUR ANSWER IS NO, SKIP TO ¶ E.

30. What amount of exemplary damages do you award plaintiff? (See Instruction No. 12.)

$58,500,00.00

PLEASE GO ON TO ¶ E.

¶ E. **Securities Laws Violations--Securities Fraud.** With regard to the claims of UIH for securities fraud against Defendant The Wharf (Holdings) Investments Limited:

31. Do you find that, in connection with a sale of a security to UIH, Wharf Holdings either: (a) employed a device, scheme, or artifice to defraud; (b) made a misrepresentation or omission of a material fact; or (c) engaged in an act, practice, or course of business that operated as a fraud or deceit upon UIH? (See Instructions No. 52-54 and 58.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 31 IS YES, GO ON TO QUESTION NO. 32. IF

YOUR ANSWER IS NO, SKIP TO THE END AND SIGN THIS VERDICT FORM.

32. Do you find that Wharf Holdings acted knowingly? (See Instruction No. 55.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 32 IS YES, GO ON TO QUESTION NO. 33. IF YOUR ANSWER IS NO, SKIP TO THE END AND SIGN THIS VERDICT FORM.

33. Do you find that UIH justifiably relied upon Wharf Holdings' conduct? (See Instruction No. 56.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 33 IS YES, GO ON TO QUESTION NO. 34. IF YOUR ANSWER IS NO, SKIP TO THE END AND SIGN THIS VERDICT FORM.

34. Do you find that UIH suffered damages as a result of Wharf Holdings' wrongful conduct? (See Instruction No. 57.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 34 IS YES, GO ON TO QUESTION NO. 35. IF YOUR ANSWER IS NO, SKIP TO THE END AND SIGN THIS VERDICT FORM.

35. What amount of damages do you award UIH? (See Instruction No. 59.)

$67,000,000.00

PLEASE SIGN THIS VERDICT FORM

DATE: _____

_____
Foreman

_____
Juror

_____
Juror

_____
Juror

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Juror

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Juror

GO ON TO JURY VERDICT FORM 2 -- WHARF COMMUNICATIONS

JURY VERDICT FORM 2 -- WHARF COMMUNICATIONS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 94-K-2560

UNITED INTERNATIONAL HOLDINGS INC., et al.,

Plaintiffs,

vs.

THE WHARF (HOLDINGS) LIMITED, et al.,

Defendants.

JURY VERDICT FORM 2 -- DEFENDANT WHARF COMMUNICATIONS INVESTMENTS LIMITED

We, the jury, present our Answers to Questions submitted by the Court, to which we have all agreed.

¶ A. **Deceit Based on Fraud**. With regard to the claim of UIH for deceit based on fraud against Defendant Wharf Communications Investments Limited:

1. Do you find that Wharf Communications either:

   (a) Made a false representation which at the time made concerned a past or present fact (see Instruction No. 20); or

(b) Failed to disclose a past or present fact which it had a duty to disclose? (See Instruction No. 23.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 1 IS YES, GO ON TO QUESTION NO. 2. IF YOUR ANSWER IS NO, SKIP TO ¶ B.

2. Do you find that the fact was material? (See Instruction No. 21.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 2 IS YES, GO ON TO QUESTION NO. 3. IF YOU ANSWER IS NO, SKIP TO ¶ B.

3. Do you find that Wharf Communications either:

(a) Made the representation knowing it to be false or was aware that it was without knowledge as to whether the representation was true or false; or

(b) Failed to disclose the fact with the intent of creating in the mind of UIH a false impression of the actual facts?

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 3 IS YES, GO ON TO QUESTION NO. 4. IF YOUR ANSWER IS NO, SKIP TO ¶ B.

4. Do you find that Wharf Communications either:

   (a) Made the representation with the intent that UIH act in reliance on the representation; or

   (b) Failed to disclose the fact with the intent that UIH would take a course of action it might not take if it knew the actual facts?

   _X_ YES
   ___ NO

   IF YOUR ANSWER TO QUESTION NO. 4 IS YES, GO ON TO QUESTION NO. 5. IF YOUR ANSWER IS NO, SKIP TO ¶ B.

5. Do you find that UIH either:

   (a) Relied on the representation; or

   (b) Took action relying on the assumption that the undisclosed fact did not exist or was different from what it actually was? (See Instruction No. 22.)

   _X_ YES
   ___ NO

   IF YOUR ANSWER TO QUESTION NO. 5 IS YES, GO ON TO QUESTION NO. 6. IF YOUR ANSWER IS NO, SKIP TO ¶ B.

6. Do you find that UIH's reliance was justified?

   _X_ YES
   ___ NO

   IF YOUR ANSWER TO QUESTION NO. 6 IS YES, GO ON TO QUESTION NO. 7. IF YOUR ANSWER IS NO, SKIP TO ¶ B.

7. Do you find that this reliance caused damage to UIH?

   _X_ YES
   ___ NO

   IF YOUR ANSWER TO QUESTION NO. 7 IS YES, GO ON TO QUESTION NO. 8. IF YOUR ANSWER IS NO, SKIP TO ¶ B.

8. What amount of damages do you award UIH? (See Instruction No. 25.)

   $67,000,000.00

   PLEASE GO ON TO QUESTION NO. 9.

9. Do you find that Wharf Communication's actions were attended by circumstances of fraud, malice, or willful and wanton conduct? (See Instructions No. 12-13.)

   ___ YES
   _X_ NO

   IF YOUR ANSWER TO QUESTION NO. 9 IS YES, GO ON TO QUESTION NO. 10. IF YOUR ANSWER IS NO, SKIP TO ¶ B.

10. What amount of exemplary damages do you award UIH? (See Instruction No. 12.)

    $_____

    PLEASE GO ON TO ¶ B.

¶ B. **Negligent Misrepresentation.** With regard to the claim of UIH for negligent misrepresentation against Defendant Wharf Communications Investments Limited:

11. Do you find that Wharf Communications gave false information to UIH?

    _X_ YES
    ___ NO

IF YOUR ANSWER TO QUESTION NO. 11 IS YES, GO ON TO QUESTION NO. 12. IF YOUR ANSWER IS NO, SKIP TO ¶ C.

12. Do you find that Wharf Communications gave such information to UIH in the course of a transaction in which Wharf Communications had a financial interest?

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 12 IS YES, GO ON TO QUESTION NO. 13. IF YOUR ANSWER IS NO, SKIP TO ¶ C.

13. Do you find that Wharf Communications gave the information to UIH for use in a business transaction with a person or entity other than Wharf Communications?

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 13 IS YES, GO ON TO QUESTION NO. 14. IF YOUR ANSWER IS NO, SKIP TO ¶ C.

14. Do you find that Wharf Communications was negligent in obtaining or communicating the information? (See Instruction No. 28.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 14 IS YES, GO ON TO QUESTION NO. 15. IF YOUR ANSWER IS NO, SKIP TO ¶ C.

15. Do you find that Wharf Communications gave the information with the intent or knowing that UIH would act in reliance on the information?

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 15 IS YES, GO ON TO QUESTION NO. 16. IF YOUR ANSWER IS NO, SKIP TO ¶ C.

16. Do you find that UIH relied on the information?

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 16 IS YES, GO ON TO QUESTION NO. 17. IF YOUR ANSWER IS NO, SKIP TO ¶ C.

17. Do you find that reliance on the information supplied by Wharf Communications caused damage to UIH?

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 17 IS YES, GO ON TO QUESTION NO. 18. IF YOUR ANSWER IS NO, SKIP TO ¶ C.

18. What amount of damages do you award UIH? (See Instruction No. 29.)

$8,100,000.00

PLEASE GO ON TO ¶ C.

¶ C. **Breach of Contract.** With regard to the claim of UIH for breach of contract against Defendant Wharf Communications Investments Limited:

19. Do you find that Wharf Communications entered into a contract with UIH granting UIH an option to purchase a 10% ownership interest in the Hong Kong cable project? (See Instructions No. 31-40.)

X YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 19 IS YES, GO ON TO QUESTION NO. 20. IF YOUR ANSWER IS NO, SKIP TO ¶ D.

20. Do you find that the conditions precedent, if any, to Wharf Communications' obligation to perform the contract have been fulfilled or excused? (See Instructions No. 42-43.)

X YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 20 IS YES, GO ON TO QUESTION NO. 21. IF YOUR ANSWER IS NO, SKIP TO ¶ D.

21. Do you find that Wharf Communications refused to allow UIH to exercise the option to purchase a 10% ownership interest in the Hong Kong cable project?

    _X_ YES
    ___ NO

    IF YOUR ANSWER TO QUESTION NO. 21 IS YES, GO ON TO QUESTION NO. 22. IF YOUR ANSWER IS NO, SKIP TO ¶ D.

22. Do you find that Wharf Communications has proven either:

    (a) That UIH and Wharf Communications understood they were not to be bound by the oral contract until it was put in writing and signed; or

    (b) That UIH should have known that Wharf Communications did not intend to be bound before the contract was put in writing and signed? (See Instruction No. 39.)

    ___ YES
    _X_ NO

    IF YOUR ANSWER TO QUESTION NO. 22 IS NO, GO ON TO QUESTION NO. 23. IF YOUR ANSWER IS YES, SKIP TO ¶ D.

23. What amount of damages do you award UIH? (See Instruction No. 44.)

    $67,000,000.00

    PLEASE GO ON TO ¶ D.

¶ D. **Breach of Fiduciary Duty.** With regard to the claim of UIH for breach of fiduciary duty against Defendant Wharf Communications Investments Limited:

24. Do you find that Wharf Communications and UIH were in a joint venture? (See Instruction No. 47.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 24 IS YES, GO ON TO QUESTION NO. 25. IF YOUR ANSWER IS NO, SKIP TO ¶ E.

25. Do you find that Wharf Communications breached its fiduciary duty to UIH? (See Instruction No. 48.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 25 IS YES, GO ON TO QUESTION NO. 26. IF YOUR ANSWER IS NO, SKIP TO ¶ E.

26. Do you find that UIH incurred damages?

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 26 IS YES, GO ON TO QUESTION NO. 27. IF YOUR ANSWER IS NO, SKIP TO ¶ E.

27. Do you find that Wharf Communications' breach of fiduciary duty was a cause of the UIH's damages? (See Instruction No. 49.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 27 IS YES, GO ON TO QUESTION NO. 28. IF YOUR ANSWER IS NO, SKIP TO ¶ E.

28. What amount of damages do you award UIH? (See Instruction No. 50)

$67,000,000.00

PLEASE GO ON TO QUESTION NO. 29.

29. Do you find that Wharf Communications' actions were attended by circumstances of fraud, malice, or willful and wanton conduct? (See Instructions No. 12-13).

___ YES
_X_ NO

IF YOUR ANSWER TO QUESTION NO. 29 IS YES, GO ON TO QUESTION NO. 30. IF YOUR ANSWER IS NO, SKIP TO ¶ E.

30. What amount of exemplary damages do you award UIH? (See Instruction No. 12.)

$_-------_____

PLEASE GO ON TO ¶ E.

¶ E. **Securities Laws Violations--Securities Fraud.** With regard to the claims of UIH for securities fraud against Defendant Wharf Communications Investments Limited:

31. Do you find that, in connection with a sale of a security to UIH, Wharf Communications either: (a) employed a device, scheme, or artifice to defraud; (b) made a misrepresentation or omission of a material fact; or (c) engaged in an act, practice, or course of business that operated as a fraud or deceit upon UIH? (See Instructions No. 52-54 and 58.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 31 IS YES, GO ON TO QUESTION NO. 32. IF YOUR ANSWER IS NO, SKIP TO THE END AND SIGN THIS VERDICT FORM.

32. Do you find that Wharf Communications acted knowingly? (See Instruction No. 55.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 32 IS YES, GO ON TO QUESTION NO. 33. IF YOUR ANSWER IS NO, SKIP TO THE END AND SIGN THIS VERDICT FORM.

33. Do you find that UIH justifiably relied upon Wharf Communications' conduct? (See Instruction No. 56.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 33 IS YES, GO ON TO QUESTION NO. 34. IF YOUR ANSWER IS NO, SKIP TO THE END AND SIGN THIS VERDICT FORM.

34. Do you find that UIH suffered damages as a result of Wharf Communications' wrongful conduct? (See Instruction No. 57.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 34 IS YES, GO ON TO QUESTION NO. 35. IF YOUR ANSWER IS NO, SKIP TO THE END AND SIGN THIS VERDICT FORM.

35. What amount of damages do you award UIH? (See Instruction No. 59.)

$67,000,000.00

PLEASE SIGN THIS VERDICT FORM

DATE: _____

_____
Foreman

_____
Juror

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Juror

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Juror

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GO ON TO JURY VERDICT FORM 3 -- STEPHEN NG

JURY VERDICT FORM 3 -- STEPHEN NG

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 94-K-2560

UNITED INTERNATIONAL HOLDINGS, INC., et al.,

Plaintiffs,

vs.

THE WHARF (HOLDINGS) LIMITED, et al.,

Defendants.

JURY VERDICT FORM 3 -- DEFENDANT STEPHEN NG

We, the jury, present our Answers to Questions submitted by the Court, to which we have all agreed.

¶ A. **Deceit Based on Fraud.** With regard to the claim of UIH for deceit based on fraud against Defendant Stephen Ng:

1. Do you find that Stephen Ng either:

   (a) Made a false representation which at the time made concerned a past or present fact (see Instruction No. 20); or

(b) Failed to disclose a past or present fact which it had a duty to disclose? (See Instruction No. 23.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 1 IS YES, GO ON TO QUESTION NO. 2. IF YOUR ANSWER IS NO, SKIP TO ¶ B.

2. Do you find that the fact was material? (See Instruction No 21.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 2 IS YES, GO ON TO QUESTION NO. 3. IF YOUR ANSWER IS NO, SKIP TO ¶ B.

3. Do you find that Stephen Ng either:

(a) Made the representation knowing it to be false or was aware that he was without knowledge as to whether the representation was true or false; or

(b) Failed to disclose the fact with the intent of creating in the mind of UIH a false impression of the actual facts?

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 3 IS YES, GO ON TO QUESTION NO. 4. IF YOUR ANSWER IS NO, SKIP TO ¶ B.

4. Do you find that Stephen Ng either:

   (a) Made the representation with the intent that UIH act in reliance on the representation; or

   (b) Failed to disclose the fact with the intent that UIH would take a course of action it might not take if it knew the actual facts?

   _X_ YES
   ___ NO

   IF YOUR ANSWER TO QUESTION NO. 4 IS YES, GO ON TO QUESTION NO. 5. IF YOUR ANSWER IS NO, SKIP TO ¶ B.

5. Do you find that UIH either:

   (a) Relied on the representation; or

(b) Took action relying on the assumption that the undisclosed fact did not exist or was different from what it actually was? (See Instruction No. 22.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 5. IS YES, GO ON TO QUESTION NO. 6. IF YOUR ANSWER IS NO, SKIP TO ¶ B.

6. Do you find that UIH's reliance was justified? (See Instruction No. 24.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 6 IS YES, GO ON TO QUESTION NO. 7. IF YOUR ANSWER IS NO, SKIP TO ¶ B.

7. Do you find that this reliance caused damage to UIH?

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 7 IS YES, GO ON TO QUESTION NO. 8. IF YOUR ANSWER IS NO, SKIP TO ¶ B.

8. What amount of damages do you award UIH? (See Instruction No. 25.)

$67,000,000.00

PLEASE GO ON TO QUESTION NO. 9.

9. Do you find that Stephen Ng's actions were attended by circumstances of fraud, malice, or willful and wanton conduct? (See Instructions No. 12-13.)

___ YES
_X_ NO

IF YOUR ANSWER TO QUESTION NO. 9 IS YES, GO ON TO QUESTION NO. 10. IF YOUR ANSWER IS NO, SKIP TO ¶ B.

10. What amount of exemplary damages do you award UIH? (See Instruction No. 12.)

$_-------_____

PLEASE GO ON TO ¶ B.

¶ B. **Securities Laws Violations--Securities Fraud.** With regard to the claims of UIH for securities fraud against Defendant Stephen Ng:

11. Do you find that, in connection with a sale of a security to UIH, Stephen Ng either: (a) employed a device, scheme, or artifice to defraud; (b) made a misrepresentation or omission of a material fact; or (c) engaged in an act, practice, or course of business that operated as a fraud or deceit upon UIH? (See Instructions No. 52-54, and 58.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 11 IS YES, GO ON TO QUESTION NO. 12. IF YOUR ANSWER IS NO, SKIP TO THE END OF THE VERDICT FORM AND SIGN.

12. Do you find that Stephen Ng acted knowingly? (See Instruction No. 55.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 12 IS YES, GO ON TO QUESTION NO. 13. IF YOUR ANSWER IS NO, SKIP TO THE END OF THE VERDICT FORM AND SIGN.

13. Do you find UIH justifiably relied upon Stephen Ng's conduct? (See Instruction No. 56.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 13 IS YES, GO ON TO QUESTION NO. 14. IF YOUR ANSWER IS NO, SKIP TO THE END OF THE VERDICT FORM AND SIGN.

14. Do you find that UIH suffered damages as a result of Stephen Ng's wrongful conduct? (See Instruction No. 57.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO.14 IS YES, GO ON TO QUESTION NO. 15. IF

YOUR ANSWER IS NO, SKIP TO THE END OF THE VERDICT FORM AND SIGN.

15. What amount of damages do you award UIH? (See Instruction No. 59.)

$67,000,000.00

PLEASE SIGN THIS VERDICT FORM

DATE: _____ _____
Foreman

_____ _____
Juror Juror

_____ _____
Juror Juror

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Juror Juror

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Juror Juror

GO ON TO JURY VERDICT FORM 4 -- CONTROLLING PERSONAL LIABILITY

JURY VERDICT FORM 4 - CONTROLLING PERSON LIABILITY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 94-K-2560

UNITED INTERNATIONAL HOLDINGS, INC., et al.,

Plaintiffs,

v.

THE WHARF (HOLDINGS) LIMITED, et al.,

Defendants.

JURY VERDICT FORM 4 --
CONTROLLING PERSON LIABILITY

We, the jury, present our Answers to Questions submitted by the Court, to which we have all agreed.

¶ A. **Securities Laws Violations – "Controlling Person" Violation.** With regard to the claims of UIH for violation of Section 20(a) of the Securities Exchange Act of 1934 and Section 11-51-604(5)(b) of the Colorado Securities Act against Defendant The Wharf (Holdings) Limited:

1. Did you award damages to UIH on its Securities Fraud Claim in your response to Question No. 35 (page 10) on Jury Verdict Form 2?

   _X_ YES
   ___ NO

   IF YOUR ANSWER TO QUESTION NO. 1 IS YES, GO ON TO QUESTION NO. 2. IF YOUR ANSWER IS NO, SKIP TO QUESTION NO. 4.

2. Do you find that Wharf Holdings had direct or indirect control over Wharf Communications? (See Instruction No. 61.)

   _X_ YES
   ___ NO

   IF YOUR ANSWER TO QUESTION NO. 2 IS YES, GO ON TO QUESTION NO. 3. IF YOUR ANSWER IS NO, SKIP TO QUESTION NO. 4.

3. Do you find that Wharf Holdings has proven that it acted in good faith and did not, directly or indirectly, induce Wharf Communications to violate the securities laws? (See Instruction No. 61.)

   ___ YES
   _X_ NO

   GO ON TO QUESTION NO. 4.

4. Did you award damages to UIH on its Securities Fraud Claim in your response to Question No. 15 (page 5) on Jury Verdict Form 3?

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 4 IS YES, GO ON TO QUESTION NO. 5. IF YOUR ANSWER IS NO, SKIP TO ¶ B.

5. Do you find that Wharf Holdings had direct or indirect control over Stephen Ng? (See Instruction No 61.)

_X_ YES
___ NO

IF YOUR ANSWER TO QUESTION NO. 5 IS YES, GO ON TO QUESTION NO. 6. IF YOUR ANSWER IS NO, SKIP TO ¶ B.

6. Do you find that Wharf Holdings has proven that it acted in good faith and did not, directly or indirectly, induce Stephen Ng to violate the securities laws? (See Instruction No. 61.)

___ YES
_X_ NO

GO ON TO PARAGRAPH B.

¶ B. **Securities Laws Violations – "Controlling Person" Violation.** With regard to the claims of UIH for violation of Section 20(a) of the Securities Exchange Act of 1934 and Section 11-51-604(5)(b) of the Colorado Securities Act against Defendant Wharf Communications Investments Limited:

7. Did you award damages to UIH on its Securities Fraud Claim in your answer to Question No. 15 (page 5) on Jury Verdict Form 3?

   _X_ YES
   ___ NO

   IF YOUR ANSWER TO QUESTION NO. 7 IS YES, GO ON TO QUESTION NO. 8. IF YOUR ANSWER IS NO, SKIP TO THE END AND SIGN THIS VERDICT FORM.

8. Do you find that Wharf Communications had direct or indirect control over Stephen Ng? (See Instruction No. 61.)

   _X_ YES
   ___ NO

   IF YOUR ANSWER TO QUESTION NO. 8 IS YES, GO ON TO QUESTION NO. 9. IF YOUR ANSWER IS NO, SKIP TO THE END AND SIGN THIS VERDICT FORM.

9. Do you find that Wharf Communications has proven that it acted in good faith and did not, directly or indirectly, induce Stephen Ng to violate the securities laws? (See Instruction No. 61.)

___ YES
_X_ NO

PLEASE SIGN THIS VERDICT FORM

DATE: _____

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Foreman

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Juror

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APPENDIX EQ

Selected Exhibits Submitted in Connection with Plaintiffs' ("UIH") Opposition to Defendants' Motion for Judgment as a Matter of Law, for New Trial and for Other Relief

June 27, 1997

U.S. District Court for the District of Colorado

(Supp. App. 4A-1-4A-6)

EQ-1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 94-K-2560

UNITED INTERNATIONAL HOLDINGS, INC., et al.,

Plaintiffs,

v.

THE WHARF (HOLDINGS) LIMITED, et al.,

Defendants.

PLAINTIFFS' ("UIH") OPPOSITION TO DEFENDANTS' MOTION FOR JUDGMENT AS A MATTER OF LAW, FOR NEW TRIAL AND FOR OTHER RELIEF

I. INTRODUCTION

This case was decided by a jury. The jurors were well-educated, extremely attentive throughout the eleven-week trial, took their obligations seriously, and as the Court commented on several occasions, discharged those obligations with distinction. To the extent that the weight of the evidence on a particular issue did not clearly favor UIH, the evidence at least was hotly disputed. The jury weighed this conflicting evidence and the credibility of the 30 plus witnesses, resolved those conflicts in UIH's favor, and rendered the verdicts.

Reduced to its essence, defendants' Motion is nothing more than a lament that they disagree with the jury's decision. Regardless of whether defendants argue based on the

sufficiency of the evidence or some other ground, nothing in thier grab-bag of arguments entitles

CONFIDENTIAL

WHARF COMMUNICATIONS INVESTMENTS LIMITED

Co-ordination Meeting
(9:15 a.m., 6th July 1992)

1. Strategic & development plans, etc.
   - Target board approval date 31 July 92

2. Staffing, premises, systems & other support
   - Accounting/control executive
   - Personnel executive
   - RHK office (old and new); work week; chief engineer
   - Wharf Cable HQ/Times Square
   - Management accounts

3. Strategic alliances
   - NYNEX (relationship paper)
   - Falcon Hellman & Friedman
   - UIH
   - News Corp
   - Shenzhen Centro (capital increase documentation)
   - Taiwan/CIH (intelligence)
   - Long distance carrier (who?)

4. Public profile:
   - Corporate identity
   - Mobile Asia luncheon address (7 July 92) : SN
   - Distribution of articles

5. Funding:
   - Presentation to pre-market cable project (target timetable?)

6. New opportunities:
   - FLAG project
   - Cross Country Cable (Paul Duffy)
   - Mobile data company, UK (info)

7. Projects
   - Telecom deregulation
   - Telecom business plan
   - HSBC redundancy
   - Medical imaging

   Any other business

Distribution : Mr. Stephen Ng
Mr. Vince Lam
Mr. Emil Fung
Ms. Wendy Tong
Mr. Simon Xu

3. Strategic Alliances

3.1 NYNEX

3.1.1 SN is looking for Paul Duffy, who is in France at present, to discuss NYNEX partnership issues.

3.2 Falcon/Hellman & Friedman (JV structure)

3.2.1 Marc Nathanson will talk to Brian Powers and will give us a reply.

3.3 UIH (JV structure)

3.3.1 EF said that there would be a big meeting at UIH this week to discuss about Asian projects.

3.3.2 EF to find out from UIH the proposed cost from UIH regarding their secondment of personnel to Wharf Cable.

3.4 News Corp (JV structure)

3.4.1 EF said that News Corp was interested in becoming the competitor of Star's movie channel if Star were to introduce one in Asia. News Corp does not have the library yet at present and have to start working on setting this up.

3.4.2 EF to talk to Yvonne Siu about Fox's participation in Wharf Cable programming.

3.5 TCI/Comcast

3.5.1 EF to discuss with them on the programming side. According to industry sources, Media Asset is getting close to finalizing a deal with Time Warner.

3.6 Shenzhen Centro

3.6.1 EF to work with Monica Siu on board procedures.

4. Public Profile

4.1 WCIL corporate identity to be developed after GSM bid results are announced.

4.2 Wharf Cable Pre-marketing

4.2.1 Target date of presentation is first week of August; content of presentation to include the tender invitation details.

HKCC Existing Magic System

HKCC has in its inventory a six workstation MAGIC system including the highest performance Tektronix workstations and an AO size Hewlett-Packard electrostatic plotter. The CPU is an Alphamicro which we would replace with a Digital Equipment Corporation 50 MHz 486 CPU, a CPU 3-4 times faster than the existing Alphamicro System.

A bonus with this equipment is that the Tektronix terminals were and are the best made, the HP plotter is top-of-the-line and there are two Tektronix color screen printers.

HKCC Existing Digitised System Drawings

HKCC also has on its MAGIC system the entire Hongkong area already digitised to great levels of detail including all building outlines and many of the estates are also digitised into MAGIC "details". This is an enormously time consuming and expensive task that will have to be undertaken by Wharf Cable. IF you could purchase this database (and the above equipment) many $$ and much time will be saved. SECA will install the latest software release of MAGIC as well as transfer the database to the DEC 486.

Digital Hardware and Software Compatibility

MAGIC software now runs on DEC PC's under SCO UNIX.

MagicSTAR software runs on DEC workstations (5000's and soon the new alpha). The STAR system (video to be sent) uses the MAGIC database in concert with the WIZARD customer management system to accomplish on-line system failure analysis, technician and installer dispatching and tracking, customer work order tracking for on-time delivery of service,

network status monitoring, interfaces to mobile communications devices and more.

No other CATV CADD system is as integrated or can offer as much capability as MAGIC. And MAGIC is Digital based throughout the product line.

TAPE BACKUP SYSTEMS

Although we can still supply the Exabyte unit for the DEC PC, we prefer to supply the 1/4" qic tape cartridge unit. These can be as large as 525 MB in capacity and still use standard UNIX formats (i.e.: TAR). The data portion of Hongkong should not exceed 525 MB so that a single tape for nightly backup will be sufficient. These units are less expensive than the Exabyte and can serve double duty for any DOS partitions you may have.

MAGIC SOFTWARE

MagicDRAFT — basic drawing software for entering streets, building outlines, etc.

MagicROUTE — integrated software for entering route data such as vaults, draw pits, unit counts, etc.

MagicDESIGN — integrated software for completing system design for both cable and fibre optic systems.

MagicRISE — allows the above functions to operate inside buildings and remain intelligently connected to the outside world.

MagicTRAC — Construction and Work Order management software operating from the above created MAGIC databases.

MAGIC is the only fully integrated CATV design and drafting software in the world. This means you draw it once and all other functions work from the graphics picture...no transfer to other programs, no duplicate databases. Further, SECA has the only outage analysis

and dispatching system that works from this same integrated database.

TRAINING AND SUPPORT

What type of training is desired? Use of the MAGIC system, how to design a CATV system or both? Are you interested in on-site training, Denver training or both?

Hardware support will be provided by local DEC and Tektronix offices.

Software support can be provided in several ways including on-call availability during all Wharf working hours. Please let us know which you prefer. Additionally there are many experienced MAGIC system users in the world. Having one of the users working for Wharf will eliminate the need for most support calls.

Implementation and on-going support services range from system installation and training to digitising services, design services and consulting services. What type of services should we include?

I will send more details of the software and hardware along with the other information as soon as I receive your answers to the above.

I am scheduled to go to Australia in early February. I would be pleased to stop by your offices at that time if you wish.

SecaGraphics sincerely looks forward to working with our friends at Wharf once again.

Best regards,

Terry L. Ruiseberg,
Executive Vice President

cc: Regis Frank

Ps: We would appreciate an update as to the status and time frame of your project to the extent my other questions do not address this issue.

EQ-11

SEAGRAPHICS INTERNATIONAL, INC.
350 Indiana Street, Suite 200
Golden, Colorado 80401
TEL. 303 279-3322
FAX. 303 279-2546

FAX MEMO

Pages in this transmittal: 12

Sunday, January 31, 1993

TO: NORRIS HICKERSON	WHARF CABLE	FAX 011-852-375-8139
FM: REGIS FRANK		
CC: CLARK WATTS	INTERNET INTERNATIONAL [w/o quotation attachments]	FAX 512/863-9334
GEORGE TAYLOR	[Mr. Hickerson... please provide a copy to George]	

SUBJECT:
Revised Quotation

Per request from George Taylor via telephone yesterday, we are to provide a revised quotation for the products and services to satisfy the Hong Kong project.

The attached quotation includes those areas of the project that SECA will be responsible to deliver according to the FAX that I sent you on January 26:

- MAGIC system hardware and software

- CATV design theory classroom training
- MAGIC system user training
- On-going MAGIC system software support
- Consulting services

Clark Watts from Internet is attempting to contact George to discuss his January 14 FAX on the general scope of the project as well as Internet's following areas of responsibility:

- CATV design theory hands-on training
- Design and drafting program management
- Contract design and drafting services on MAGIC for the initial 375 buildings

Please let me know if you have questions.

Regards,

APPENDIX ER

Excerpt from Defendant's Oral Argument

October 23, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 2015; Transcript 3)

Excerpt from Defendant's Oral Argument

October 23, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 2015; Transcript 3)

P R O C E E D I N G S

(At 9:00 a.m. on October 23, 1997, in the United States District Court at Denver, Colorado, before the HONORABLE JOHN L. KANE, JR., U.S. District Judge, with counsel for the parties present, the following proceedings were had:)

THE COURT: Good morning. We have UIH, et al., versus Wharf Holdings Limited, and the matter is set for argument on motions. I want to hear the Rule 50 motions and the post-trial motions for a new trial first, and then we'll go to the magistrate's orders after that.

The arguments--I suppose I should mention to you, because it perplexes me, that in two months shy of twenty years sitting up here on this perch, and the years of practice in the federal courts before that, other than Ruled 60(b) motions for newly discovered evidence, this is the first motion for new trial that I've ever encountered, and I thought that it was an artifact of the Rules of Civil Procedure that was never used any more, and then I started to read some cases, and most of them in the Seventh Circuit seem to come from Kirkland and Ellis.

So there must be something going on over there with one of those former law professors that I don't know about. But I just want you to know it's a very, very unusual experience to

have this kind of motion. We used to have them in the state court all the time, but that's all I can tell

APPENDIX ES

Excerpt from Defendant's Oral Argument

October 23, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 2028-2029; Transcript 16-17)

Excerpt from Defendant's Oral Argument

October 23, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 2028-2029; Transcript 16-17)

of the capitalization of the company, and he comes out with a range of figures. Your Honor has seen them. They're in the 60, $70 range.

And then he makes two subsequent DCF analyses, and he comes up with alternate estimates of the value of the enterprise. The second two valuations do in fact take into account the capital flows of the company, but they are still valuations of the enterprise which do not value an option to buy the enterprise.

Now, my fourth proposition is that plaintiff's counsel misrepresented to the jury that Mr. Jones had calculated the value of UIH's alleged option or contract rights after deducting the exercise price, or as he put it, the value of those rights over and above the investment UIH was required to make.

Plaintiff's counsel told the jury--this is on 7944 and 45, Your Honor--and I quote, "On the contract damages, UIH is awarded the benefit of its bargain with Wharf," skipping some irrelevancies here, Your Honor, "and that would have been the valuations that Mr. Jones did." That was the second valuation, and that was the $67 million valuation as of that date. Now, keep in mind also, and I'll talk about this on damages, when we use those numbers, 50 million, 67 million, whatever, this is over and above the investment. So if UIH has to put 50 million into the project and the project, let's say, has a value of 67, we

mean 67 over and above the 50. So the 67 is the net figure. It would actually be, if you're adding the two together, 117 million minus the 50. "So--so I just want to make sure that you understand that we don't subtract out the investment. The appraiser already does that."

Plaintiff's counsel repeatedly told the jury that UIH's right to acquire 10 per cent of the Wharf Cable System was calculated by Mr. Jones to be worth $67 million. He also told the jury that the $67 million did not have to be reduced to take account of UIH's obligation to pay the exercise price or what is the same thing, to provide 10 per cent of the equity capital of Wharf Cable.

I respectfully submit, Your Honor, hard as it may be to say, that that constitutes a misrepresentation by plaintiff's counsel of the conclusion which Mr. Jones reached.

Plaintiff's counsel falsely represented that Mr. Jones had determined the value of UIH's right or option to acquire 10 per cent of the stock of the Wharf Cable System. In fact, Mr. Jones had done no such thing. All he did was to determine the value of 10 per cent of the Wharf Cable System.

My fifth point can be briefly made. It is simply that in rendering its verdict, the jury obviously relied upon and accepted plaintiff's misrepresentation of the Jones'

APPENDIX ET

Order Allowing Certiorari

November 6, 2000

upreme Court of the United States

ET-1

SUPREME COURT of the UNITED STATES

No. 00-347

The Wharf (Holdings) Limited, et al.,
Petitioners

v.

United International Holdings, Inc., et al.

ORDER ALLOWING CERTIORARI.
Filed November 6, 2000.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Tenth Circuit is granted limited to Questions 1 and 2 presented by the petition.

November 6, 2000